



LODI CITY COUNCIL

Carnegie Forum
305 West Pine Street, Lodi

AGENDA – REGULAR MEETING

Date: September 1, 2010

Time: Closed Session 5:30 p.m.
Regular Meeting 7:00 p.m.

For information regarding this Agenda please contact:

Randi Johl, City Clerk
Telephone: (209) 333-6702

6:55 p.m. Invocation/Call to Civic Responsibility. Invocations may be offered by any of the various religious and non-religious organizations within and around the City of Lodi. Invocations are voluntary offerings of private citizens, to and for the benefit of the Council. The views or beliefs expressed by the Invocation Speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the beliefs or views of any speaker.

***NOTE:** All staff reports or other written documentation relating to each item of business referred to on the agenda are on file in the Office of the City Clerk, located at 221 W. Pine Street, Lodi, and are available for public inspection. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation contact the City Clerk's Office as soon as possible and at least 24 hours prior to the meeting date.*

C-1 Call to Order / Roll Call

C-2 Announcement of Closed Session

- a) Conference with Dean Gualco, Human Resources Manager (Labor Negotiator), Regarding Unrepresented Executive Management, Lodi City Mid-Management Association, Unrepresented Confidential Employees, AFSCME General Services and Maintenance & Operators, Police Mid-Managers, Lodi Police Officers Association, Lodi Police Dispatchers Association, International Brotherhood of Electrical Workers, Fire Mid-Managers, and Lodi Professional Firefighters Pursuant to Government Code §54957.6

C-3 Adjourn to Closed Session

NOTE: THE FOLLOWING ITEMS WILL COMMENCE NO SOONER THAN 7:00 P.M.

C-4 Return to Open Session / Disclosure of Action

A. Call to Order / Roll call

B. Pledge of Allegiance

C. Presentations

- C-1 Presentation of Certificate of Recognition to Lodi Appellation in Regard to the Second Annual Treasure Island Wine Festival, October 10, 2010

D. Consent Calendar (Reading; Comments by the Public; Council Action)

- D-1 Receive Register of Claims in the Amount of \$4,101,032.36 (FIN)
- D-2 Approve Minutes (CLK)
 - a) August 4, 2010 (Regular Meeting)
 - b) August 17, 2010 (Shirtsleeve Session)
 - c) August 18, 2010 (Regular Meeting)
 - d) August 24, 2010 (Shirtsleeve Session)
- D-3 Approve Specifications and Authorize Advertisement for Bids for 25,000 Feet of Insulated with Jacketed Concentric Neutral Underground Cable (\$50,000) (EUD)

- Res. D-4 Adopt Resolution Authorizing Procurement of Two Padmounted Liquid Insulated Vacuum Switchgear with Fault Interrupters from Trayer Engineering Corporation, of San Francisco, CA (\$72,000) (EUD)
- Res. D-5 Adopt Resolution Authorizing the Purchase of Hewlett Packard Mass Storage Device from Entisys Solutions, Inc., of Concord, CA, and Appropriating Funds (\$35,000) (EUD)
- Res. D-6 Adopt Resolution Approving Contracts for Three Public Benefits Programs, Authorizing Execution by the City Manager, and Allocating Funds (\$104,800) (EUD)
- Res. D-7 Adopt Resolution Authorizing the City Manager to Enter into a Professional Services Agreement for Preliminary Engineering of Westside Substation with Auriga Corporation, of Milpitas, CA (\$147,110) (EUD)
- Res. D-8 Adopt Resolution Approving the Master Lease Agreement with the Lodi Grape Festival and National Wine Show Association for Use of Various Festival Ground Facilities (\$21,000) (PR)
- Res. D-9 Adopt Resolution Authorizing the City Manager to Extend Use of CALNET2 Contract to Selected Telecommunication Services (CM)
- Res. D-10 Adopt Resolution Authorizing Early Payoff of Loan Contract E54402 in the Amount of \$1,433,395.68 with the State Department of Water Resources and Increasing Appropriations in the Amount of \$1,205,370 (CM)
- Res. D-11 Adopt Resolution Approving Impact Mitigation Fee Program Annual Report for Fiscal Year 2009/10 (PW)
- D-12 Approve Capital Improvement Plan for Fiscal Year 2010/11 (PW)
- D-13 Accept Notice of Draft Amendments to Conflict of Interest Code for the 2010 Calendar Year per Government Code §87306.5 (CA)
- D-14 Set Public Hearing for September 21, 2010, to Consider and Approve the 2009/10 Community Development Block Grant Consolidated Annual Performance and Evaluation Report; and an Amendment of the 2010/11 Action Plan to Accommodate the Reallocation of Unused Community Development Block Grant Funds from the 2009/10 Program Year (CD)

E. Comments by the Public on Non-Agenda Items

THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES.

The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted.

Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

F. Comments by the City Council Members on Non-Agenda Items

G. Comments by the City Manager on Non-Agenda Items

H. Public Hearings – None

I. Communications

- I-1 Appointment to the Lodi Improvement Committee (CLK)

J. Regular Calendar

- Res. J-1 Adopt Resolution Accepting a Proposal from the Art Advisory Board for a Seward Johnson Sculpture Exhibit in Downtown Lodi for Display from April 2011 through Mid-July 2011 and Appropriating Funds (\$30,000) (COM)
- Res. J-2 Approve Downtown Lodi Business Partnership 2010/11 Annual Report, Adopt Resolution of Intention to Levy Annual Assessment, and Set Public Hearing for October 6, 2010, to Consider the Proposed Assessment (CM)
- J-3 Authorize Staff to Modify Memorandum of Understanding According to Signed Addendum Between the City of Lodi and the Lodi City Mid-Management Association (CM)
- J-4 Authorize Staff to Modify Memorandum of Understanding According to Signed Addendum Between the City of Lodi and the Lodi Police Dispatchers Association (CM)

K. Ordinances – None

L. Adjournment

Pursuant to Section 54954.2(a) of the Government Code of the State of California, this agenda was posted at least 72 hours in advance of the scheduled meeting at a public place freely accessible to the public 24 hours a day.

Randi Johl
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Presentation of Certificate of Recognition to Lodi Appellation in Regard to the Second Annual Treasure Island Wine Festival, October 10, 2010

MEETING DATE: September 1, 2010

PREPARED BY: City Clerk

RECOMMENDED ACTION: Mayor Katzakian present a Certificate of Recognition to Lodi Appellation in regard to the second annual Treasure Island Wine Festival, October 10, 2010.

BACKGROUND INFORMATION: The City of San Francisco and the leaders of Treasure Island have offered their support to partner with the Lodi region to produce the second annual Treasure Island Wine Festival on Sunday, October 10, 2010, exclusively featuring Lodi Appellation wines. The Mayor will present a Certificate of Recognition to the growers and vintners of the Lodi Appellation for positively cultivating the industry involving wine production consumption, grape cultivation, and allied industries.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None.

Randi Johl
City Clerk

RJ/JMR

APPROVED: _____
Konradt Bartlam, Interim City Manager



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Receive Register of Claims through August 12, 2010 in the Total Amount of \$4,101,032.36

MEETING DATE: September 1, 2010

PREPARED BY: Financial Services Manager

RECOMMENDED ACTION: Receive the attached Register of Claims for \$4,101,032.36.

BACKGROUND INFORMATION: Attached is the Register of Claims in the amount of \$4,101,032.36 through 08/12/10. Also attached is Payroll in the amount of \$2,583,000.63.

FISCAL IMPACT: n/a

FUNDING AVAILABLE: As per attached report.

Ruby R. Paiste, Financial Services Manager

RRP/rp

Attachments

APPROVED: _____
Konradt Bartlam, Interim City Manager

Accounts Payable
Council Report

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Date - 08/17/10
Amount

As of Thursday	Fund	Name	Amount
08/12/10	00100	General Fund	748,421.57
	00160	Electric Utility Fund	1,560,895.66
	00161	Utility Outlay Reserve Fund	7,204.75
	00164	Public Benefits Fund	18,556.69
	00167	Energy Efficiency & CBGP-ARRA	2,930.00
	00170	Waste Water Utility Fund	73,290.13
	00171	Waste Wtr Util-Capital Outlay	849.05
	00172	Waste Water Capital Reserve	604.86
	00180	Water Utility Fund	10,390.88
	00181	Water Utility-Capital Outlay	135,069.14
	00182	IMF Water Facilities	96.53
	00210	Library Fund	3,810.46
	00230	Asset Seizure Fund	899.20
	00234	Local Law Enforce Block Grant	181.62
	00235	LPD-Public Safety Prog AB 1913	61.11
	00250	LFD-Federal Grants	56,502.67
	00260	Internal Service/Equip Maint	14,761.77
	00270	Employee Benefits	453,174.43
	00300	General Liabilities	39,038.17
	00301	Other Insurance	135,100.00
	00321	Gas Tax	19,660.82
	00325	Measure K Funds	10,633.42
	00332	IMF(Regional) Streets	2,750.00
	00339	Prop.1B-Local Streets & Roads	243,849.85
	00340	Comm Dev Special Rev Fund	212.90
	00345	Community Center	9,204.83
	00346	Recreation Fund	9,499.59
	00459	H U D	570.00
	01218	IMF General Facilities-Adm	3,368.50
	01250	Dial-a-Ride/Transportation	222,796.05
	01410	Expendable Trust	12,226.20
Sum			3,796,610.85
	00190	Central Plume	304,421.51
Sum			304,421.51
Total Sum			4,101,032.36

Council Report for Payroll

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Date - 08/17/10

Payroll	Pay Per Date	Co	Name	Gross Pay
Regular	07/25/10	00100	General Fund	909,591.62
		00160	Electric Utility Fund	171,223.10
		00164	Public Benefits Fund	5,354.43
		00170	Waste Water Utility Fund	96,665.88
		00180	Water Utility Fund	1,274.78
		00210	Library Fund	30,000.98
		00235	LPD-Public Safety Prog AB 1913	2,021.30
		00260	Internal Service/Equip Maint	21,706.58
		00321	Gas Tax	39,313.10
		00340	Comm Dev Special Rev Fund	22,685.66
		00345	Community Center	24,075.21
		00346	Recreation Fund	77,491.67
		01250	Dial-a-Ride/Transportation	6,889.67
Pay Period Total:				1,408,293.98
Sum				
	08/08/10	00100	General Fund	703,371.37
		00160	Electric Utility Fund	154,415.08
		00164	Public Benefits Fund	4,976.05
		00170	Waste Water Utility Fund	93,555.16
		00180	Water Utility Fund	1,553.72
		00210	Library Fund	28,919.39
		00235	LPD-Public Safety Prog AB 1913	3,199.85
		00260	Internal Service/Equip Maint	21,886.56
		00321	Gas Tax	40,453.07
		00340	Comm Dev Special Rev Fund	21,438.33
		00345	Community Center	23,442.68
		00346	Recreation Fund	71,163.69
		01250	Dial-a-Ride/Transportation	6,331.70
Pay Period Total:				1,174,706.65
Sum				



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Approve Minutes
a) August 4, 2010 (Regular Meeting)
b) August 17, 2010 (Shirtsleeve Session)
c) August 18, 2010 (Regular Meeting)
d) August 24, 2010 (Shirtsleeve Session)

MEETING DATE: September 1, 2010

PREPARED BY: City Clerk

RECOMMENDED ACTION: Approve the following minutes as prepared:
a) August 4, 2010 (Regular Meeting)
b) August 17, 2010 (Shirtsleeve Session)
c) August 18, 2010 (Regular Meeting)
d) August 24, 2010 (Shirtsleeve Session)

BACKGROUND INFORMATION: Attached are copies of the subject minutes marked Exhibit A through D.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

Randi Johl
City Clerk

Attachments

APPROVED: _____
Konradt Bartlam, Interim City Manager

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, AUGUST 4, 2010**

C-1 Call to Order / Roll Call

The City Council Closed Session meeting of August 4, 2010, was called to order by Mayor Katzakian at 7:04 p.m.

Present: Council Member Hansen, Council Member Johnson, Mayor Pro Tempore Hitchcock, and Mayor Katzakian

Absent: Council Member Mounce

Also Present: Interim City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

C-2 Announcement of Closed Session

- a) Prospective Sale of Giant Garter Snake Habitat Conservation Easement Covering 0.15 Acres of 12751 North Thornton Road, Lodi; Negotiating Parties Are Rad Bartlam for the City of Lodi and Port of Stockton; Price and Terms Are Under Negotiation; Pursuant to Government Code §54956.8

C-3 Adjourn to Closed Session

At 6:52 p.m., Mayor Katzakian adjourned the meeting to a Closed Session to discuss the above matter. The Closed Session adjourned at 7:00 p.m.

C-4 Return to Open Session / Disclosure of Action

At 7:04 p.m., Mayor Katzakian reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following action.

Item C-2 (a) was discussion only with no reportable action.

A. Call to Order / Roll call

The Regular City Council meeting of August 4, 2010, was called to order by Mayor Katzakian at 7:04 p.m.

Present: Council Member Hansen, Council Member Johnson, Mayor Pro Tempore Hitchcock, and Mayor Katzakian

Absent: Council Member Mounce

Also Present: Interim City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

B. Pledge of Allegiance

C. Presentations

C-1 Quarterly Update by the Greater Lodi Area Youth Commission (COM)

Mandy Majidian and Dey Nave, members of the Greater Lodi Area Youth Commission, gave an update on the activities and accomplishments of the Commission. Mayor Katzakian then presented Certificates of Recognition to the following Teen of the Month award recipients: Alyson Hamlet - June 2010; Danielle Spray - July 2010; and Rochelle Lippert - August 2010 (who was

unable to attend the meeting).

D. Consent Calendar (Reading; Comments by the Public; Council Action)

Mayor Pro Tempore Hitchcock made a motion, second by Council Member Johnson, to approve the following items hereinafter set forth, **except those otherwise noted**, in accordance with the report and recommendation of the City Manager.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, Mayor Pro Tempore Hitchcock, and Mayor Katakian

Noes: None

Absent: Council Member Mounce

D-1 Receive Register of Claims in the Amount of \$3,388,191.45 (FIN)

Claims were approved in the amount of \$3,388,191.45.

D-2 Approve Minutes (CLK)

The minutes of July 20, 2010 (Shirtsleeve Session), July 21, 2010 (Regular Meeting), and July 27, 2010 (Shirtsleeve Session) were approved as written.

D-3 Approve Specifications and Authorize Advertisement for Bids for Extruded Thermoplastic Traffic Stripes for Various City Streets 2010 (PW)

Approved the specifications and authorized advertisement for bids for extruded thermoplastic traffic stripes for various City streets 2010.

D-4 Adopt Resolution Authorizing Sole Source Procurement of Residential Water Meters from Badger Meter, Inc., of Milwaukee, Wisconsin, for City of Lodi Residential Water Meter Program (PW)

Adopted Resolution No. 2010-125 authorizing the sole source procurement of residential water meters from Badger Meter, Inc., of Milwaukee, Wisconsin, for the City of Lodi Residential Water Meter Program.

D-5 Adopt Resolution Approving Purchase of Vac-Con Sewer Vacuum Truck from Municipal Maintenance Equipment, Inc., of Sacramento (\$316,518) (PW)

Adopted Resolution No. 2010-126 approving the purchase of vac-con sewer vacuum truck from Municipal Maintenance Equipment, Inc., of Sacramento, in the amount of \$316,518.

D-6 Adopt Resolution Approving the Purchase of Encoder Receiver Transmitter Equipped Itron Solid-State Meters from General Pacific, of Portland, OR (\$333,000) (EUD)

Adopted Resolution No. 2010-127 approving the purchase of encoder receiver transmitter equipped Itron solid-state meters from General Pacific, of Portland, OR, in the amount of \$333,000.

D-7 Adopt Resolution Awarding Contract for Well 27 On-Site Improvements to A.M. Stephens Construction Company, Inc., of Lodi (\$172,106), and Appropriating Funds (\$234,000) (PW)

Adopted Resolution No. 2010-128 awarding the contract for Well 27 on-site improvements to A.M. Stephens Construction Company, Inc., of Lodi, in the amount of \$172,106, and appropriating funds in the amount of \$234,000.

D-8 Adopt Resolution Awarding Contract for Traffic Signal Preventive Maintenance and Repair Program to Republic ITS, of Novato (\$17,819), and Authorizing the City Manager to Negotiate and Execute One-Year Contract Extension (PW)

Adopted Resolution No. 2010-129 awarding the contract for Traffic Signal Preventive Maintenance and Repair Program to Republic ITS, of Novato, in the amount of \$17,819, and authorizing the City Manager to negotiate and execute a one-year contract extension.

D-9 Adopt Resolution Authorizing Additional Task Order with West Yost Associates for Fiscal Year 2010/11 to Provide Permit Assistance and Prepare Various Studies Required by City's Wastewater Discharge Permit (\$284,400) (PW)

Adopted Resolution No. 2010-130 authorizing additional Task Order with West Yost Associates for fiscal year 2010/11 to provide permit assistance and prepare various studies required by City's Wastewater Discharge Permit in the amount of \$284,400.

D-10 Adopt Resolution Accepting Improvements Under Contract for Grape Bowl Americans with Disabilities Act (ADA) Construction Project and Appropriating Funds (\$89,700) (PW)

Adopted Resolution No. 2010-131 accepting improvements under contract for Grape Bowl Americans with Disabilities Act (ADA) Construction Project and appropriating funds in the amount of \$89,700.

D-11 Adopt Resolution Approving Contract Change Orders No. 1, No. 2, and No. 3 and Appropriating Additional Funds for Lodi Grape Bowl All-Weather Surface Project (\$134,400) (PW)

Interim City Manager Bartlam briefly introduced the subject matter of the proposed resolution approving change orders for the all-weather surface project. Public Works Director Wally Sandelin provided a brief presentation regarding the proposed change orders for the Lodi Grape Bowl all-weather surface project.

In response to Council Member Hansen, Mr. Sandelin stated four handicap stalls is minimum requirement and staff is trying to keep costs down to a minimum. Mr. Sandelin stated the two lower spaces cost \$20,000 and the two upper spaces cost \$45,000. He stated the stalls must have a certified path of travel to the event location.

In response to Council Member Hansen, Mr. Sandelin stated the concrete walkway does not affect the drainage.

In response to Council Member Johnson, Mr. Sandelin provided an overview of the location of the upper and lower handicap parking stalls on the map of the site.

In response to Council Member Johnson, Mr. Sandelin stated the 10,000 and 7,000 figures represent future planned seating capacity. Mr. Bartlam stated that, despite any action that is taken by the Council tonight, the facility is still non Americans with Disabilities Act compliant and improvements will be ongoing. A brief discussion ensued between the City Council, City Manager, and Mr. Sandelin regarding the same.

In response to Council Member Johnson, Mr. Bartlam provided an overview of the metal stair and

concrete stair options, stating both are acceptable from a regulatory standpoint although the concrete stair option is a better long-term improvement.

In response to Council Member Johnson, Mr. Sandelin stated the handicap ramp goes down to the parking stalls and the concrete walkways and sidewalks are connected for a clear path of travel.

In response to Mayor Pro Tempore Hitchcock, Mr. Sandelin stated that, when reviewing the existing ramp placement and the proposed improvements, staff saw an opportunity to bring the late developing concrete stairway option to Council so that it can make the decision.

In response to Mayor Pro Tempore Hitchcock, Mr. Sandelin stated over time gravel will have weed growth and become compacted and concrete will be the cleaner installation.

In response to Mayor Pro Tempore Hitchcock, Mr. Sandelin and Mr. Schwabauer reviewed the handicap sidewalk and accessible parking stall related rules and regulations.

In response to Mayor Pro Tempore Hitchcock, Mr. Schwabauer stated schools go through the State versus the City when installing handicap accessible parking stalls and different regulations may apply.

In response to Mayor Katzakian, Mr. Sandelin stated there is drainage with a metal grate.

In response to Mayor Pro Tempore Hitchcock, Mr. Sandelin stated there is adequate room between the concrete wall and the positioning of the soccer and football fields.

Jack Fiore spoke in support of the proposed change orders for the Grape Bowl facility based on overall benefit to the community.

Council Member Johnson made a motion, second by Council Member Hansen, to adopt Resolution No. 2010-139 approving Contract Change Orders No. 1, No. 2, and No. 3 and appropriating additional funds for Lodi Grape Bowl all-weather surface project in the amount of \$134,400.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, and Mayor Katzakian

Noes: Mayor Pro Tempore Hitchcock

Absent: Council Member Mounce

D-12 Accept Improvements Under Contract for Traffic Signal Modification Project at Church Street and Lockeford Street and at Elm Street and Ham Lane (PW)

Accepted improvements under contract for Traffic Signal Modification Project at Church Street and Lockeford Street and at Elm Street and Ham Lane.

D-13 Adopt Resolution Authorizing the City Manager to Enter into a Professional Services Agreement for an Electric System Arc Flash Study with RW Beck, Inc., of Hendersonville, TN (\$39,900) (EUD)

Adopted Resolution No. 2010-132 authorizing the City Manager to enter into a professional services agreement for an Electric System Arc Flash Study with RW Beck, Inc., of Hendersonville, TN, in the amount of \$39,900.

- D-14 Adopt Resolution Authorizing the City Manager to Execute an Amendment to the Northern California Power Agency (NCPA) Green Power Project (NGPP) 3rd Phase Agreement to Add City of Gridley (EUD)

Adopted Resolution No. 2010-133 authorizing the City Manager to execute an amendment to the Northern California Power Agency (NCPA) Green Power Project (NGPP) 3rd Phase Agreement to add City of Gridley.

- D-15 Adopt Resolution Authorizing the City Manager to Enter into a Letter of Agreement Between the City of Lodi and Ralcorp/Cottage Bakery for the Sale of Designated Electric Distribution Facilities (\$166,234) (EUD)

Adopted Resolution No. 2010-134 authorizing the City Manager to enter into a letter of agreement between the City of Lodi and Ralcorp/Cottage Bakery for the sale of designated electric distribution facilities in the amount of \$166,234.

- D-16 Adopt Resolution Authorizing the Lodi Police Department to Participate in a Traffic Initiative Grant Funded by the Office of Traffic Safety (PD)

Adopted Resolution No. 2010-135 authorizing the Lodi Police Department to participate in a Traffic Initiative Grant funded by the Office of Traffic Safety.

- D-17 Adopt Resolution Authorizing Submittal of Safe Route to School Grant Application to California Department of Transportation and Authorizing City Manager to Execute Grant Application (PW)

Adopted Resolution No. 2010-136 authorizing submittal of Safe Route to School Grant application to California Department of Transportation and authorizing the City Manager to execute the grant application.

- D-18 Adopt Resolution Amending Traffic Resolution No. 97-148 by Approving Installation of Stop Control on Pixley Parkway at Auto Center Drive (PW)

This item was pulled for further discussion by Bill Estanislau, a member of the public. Bill Estanislau spoke in support of the proposed action, stating the proposed stop sign near the new DMV site will provide additional safety in the area.

Council Member Johnson made a motion, second by Council Member Hansen, to adopt Resolution No. 2010-140 amending Traffic Resolution No. 97-148 by approving the installation of stop control on Pixley Parkway at Auto Center Drive.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, Mayor Pro Tempore Hitchcock, and Mayor Katzakian

Noes: None

Absent: Council Member Mounce

- D-19 Adopt Resolution Amending the Bylaws for the Lodi Arts Commission to Reduce the Membership of the Commission from Eleven to Nine Members (COM)

Adopted Resolution No. 2010-137 amending the bylaws for the Lodi Arts Commission to reduce the membership of the Commission from eleven to nine members.

D-20 Adopt Resolution Revising the Lodi Budget/Finance Committee Membership from Seven to Five Members (CM)

Adopted Resolution No. 2010-138 revising the Lodi Budget/Finance Committee membership from seven to five members.

D-21 Set Public Hearing for August 18, 2010, to Consider the Certification of the Final Mitigated Negative Declaration for the Harney Lane Interim Improvements Project (CD)

Set public hearing for August 18, 2010, to consider the certification of the Final Mitigated Negative Declaration for the Harney Lane Interim Improvements Project.

D-22 Cancel September 15, 2010, Regular City Council Meeting (CLK)

Canceled the September 15, 2010, Regular City Council Meeting.

E. Comments by the Public on Non-Agenda Items

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Kelly Geist invited the City Council and the public to the Twin Arbors fundraiser to be held on August 28, 2010, from 11:00 a.m. to 4:00 p.m. at the Twin Arbors Athletic Club.

Bob Takeuchi, Chair of the Budget and Finance Committee, spoke in regard to the relevancy and purpose of the Committee.

F. Comments by the City Council Members on Non-Agenda Items

Council Member Johnson commended the Lodi Police Department for its efforts with respect to National Night Out. Mr. Johnson also asked that the City Council discuss park security concerns at a future Shirtsleeve Session.

Council Member Hansen commended the Lodi Police Department for its efforts with respect to National Night Out. Mr. Hansen also discussed the availability of a County weatherization program for low-income residents, Lodi Energy Center status, funding for San Joaquin Council of Governments staff to participate in major construction projects, and SB 722 renewable portfolio standards. Mr. Hansen also commended the girls' softball team on making it to the World Series.

G. Comments by the City Manager on Non-Agenda Items

None.

H. Public Hearings - None

I. Communications

I-1 Post for One Vacancy on the Lodi Animal Advisory Commission (CLK)

Mayor Pro Tempore Hitchcock made a motion, second by Council Member Johnson, to direct the City Clerk to post for the following vacancy:

Lodi Animal Advisory Commission

Dan Phillips, Term to expire December 31, 2012

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, Mayor Pro Tempore Hitchcock, and Mayor Katzakian

Noes: None

Absent: Council Member Mounce

J. Regular Calendar

J-1 Approve Plans and Specifications and Authorize Advertisement for Bids for White Slough Water Pollution Control Facility Bio-Solids Dewatering Facility (PW)

Interim City Manager Rad Bartlam briefly introduced the subject matter of the water pollution control facility.

Deputy Public Works Director Charlie Swimley provided a PowerPoint presentation regarding the water pollution control facility. Specific topics of discussion included facts, staff recommendation, history, land application facilities, application of liquid biosolids, uneven crop growth, biosolids before dewatering, dewatering press, biosolids cake, biosolids spreading, landfill disposal, proposed dewatering facility location, outside dewatering services, regulatory considerations, proposed dewatering facility cost, schedule, why dewatering, and the State Board order.

In response to Mayor Katzakian, David Anderson from West Yost and Associates stated the parts may wear out on a particular press but the overall life expectancy of the equipment is 20 years. Mr. Swimley stated the cost for each press is \$400,000 and does not include maintenance.

In response to Mayor Pro Tempore Hitchcock, Mr. Swimley stated that, although the current hydraulic application cannot be done for much longer, land application can be done as long as the City can show it is not impacting water.

In response to Mayor Pro Tempore Hitchcock, Mr. Swimley stated based on the land application report some wells with concentration show that there may be some impact.

In response to Mayor Pro Tempore Hitchcock, Mr. Swimley stated there are other options to land application and they could cost more or less depending upon the methodology. He stated additional work needs to be done to determine the impact levels and the best treatment control.

In response to Mayor Pro Tempore Hitchcock, Mr. Swimley stated that, even if there is a prohibition placed on land application, the proposed methods will still allow for trucking.

In response to Mayor Pro Tempore Hitchcock, Mr. Swimley stated if the money was not available staff would still be recommending dewatering through consultant services. Mr. Schwabauer stated regardless of the future changes in regulation dewatering will be necessary because liquid form will always be prohibited.

Discussion ensued between Council Member Johnson and Mr. Swimley regarding the amount of waste generated, the amount applied by land, and the amount to be hauled off by trucking.

In response to Council Member Johnson, Mr. Swimley stated the current lease does not permit direct application by the farm owners.

In response to Council Member Johnson, Mr. Swimley stated the common practice for most agencies is to pay for waste disposal.

In response to Council Member Hansen, Mr. Swimley stated it is a good idea for agencies to stay ahead of the game on waste disposal before the State comes in and imposes more regulations.

In response to Council Member Johnson, Mr. Ayers stated there is a time frame in which to obligate bonds, but it is not necessarily a use or lose it proposition.

Council Member Hansen made a motion, second by Council Member Johnson, to approve the plans and specifications and authorize advertisement for bids for White Slough Water Pollution Control Facility Bio-Solids Dewatering Facility.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, Mayor Pro Tempore Hitchcock, and Mayor Katzakian

Noes: None

Absent: Council Member Mounce

J-2 Consider Approval of Insubstantial Amendments to the Assignment and Assumption Agreement, Attached as Exhibit G to the Development Agreement By and Between the City of Lodi and San Joaquin Valley Land Company ("SJVLC"), and Thereby Consent to the Assignment of the Costco Site from SJVLC to Costco (CA)

City Attorney Schwabauer provided a brief presentation regarding the proposed Assignment and Assumption Agreement. Specific topics of discussion included an overview of the Reynolds Ranch Development Agreement, the proposed Costco site, previous Assignment and Assumption Agreement for Blue Shield, and the benefits and burdens to be assigned between the original developer and the land owner.

In response to Mayor Pro Tempore Hitchcock, Mr. Schwabauer stated some of the fee programs are established and the costs are known while others are not. He stated it would be difficult to collect money for a specified purpose when the amount is still unknown and some items are paid with building permits. Mr. Schwabauer individually reviewed the fee programs listed on page two of the blue sheet.

In response to Mayor Pro Tempore Hitchcock, Mr. Schwabauer stated the purchase of the Lyons building satisfied one of the conditions pursuant to the former City Manager's direction.

In response to Mayor Pro Tempore Hitchcock, Mr. Schwabauer stated there is some risk that the company may go under but there is property with the Costco site that can be leveraged against whoever the developer of the project is at the time. Mr. Schwabauer stated the proposed agreement would let Costco off the hook while keeping Reynolds Ranch on the hook.

In response to Mayor Katzakian, Mr. Bartlam stated the permit and impact fees for the project are well over \$1 million.

Dale Gillespie spoke in favor of the proposed agreement, stating Costco is paying over \$1.6 million consisting of a variety of fees and discussed the fees for which the costs are yet to be determined.

Mayor Pro Tempore Hitchcock requested a copy of the original Reynolds Ranch Development Agreement.

Council Member Hansen made a motion, second by Council Member Johnson, to approve insubstantial amendments to the Assignment and Assumption Agreement, attached as Exhibit G to the Development Agreement by and between the City of Lodi and San Joaquin Valley Land Company (SJVLC), and thereby consent to the assignment of the Costco site from SJVLC to Costco.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, and Mayor Katzakian

Noes: Mayor Pro Tempore Hitchcock

Absent: Council Member Mounce

K. Ordinances - None

L. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 9:25 p.m.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, AUGUST 17, 2010**

A. Roll call by City Clerk

A Special Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held at Fire Station 2, 705 East Lodi Avenue, Lodi, on Tuesday, August 17, 2010, commencing at 7:00 a.m.

Present: Council Member Hansen, Council Member Mounce, Mayor Pro Tempore Hitchcock, and Mayor Katzakian

Absent: Council Member Johnson

Also Present: Interim City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

B. Topic(s)

B-1 Tour and Discussion Regarding Physical Condition of Fire Station 2 and Other City Fire Stations (FD)

Interim City Manager Rad Bartlam provided a brief introduction of the subject matter of the physical condition of Fire Station No. 2.

Fire Chief Kevin Donnelly and Battalion Chief Ron Heberle provided a presentation regarding the physical condition of Fire Station No. 2 and conducted a tour of the facility. Specific topics of discussion on the tour included the 1981 construction of the original facility, small footprint of the building, need for physical improvements to the facility, roof replacement, rodent infestation, mold and water damage, electrical and other systems challenges, physical tear down of the tower, equipment placement and storage needs, space for training, and options associated with remodeling the existing facility or construction of a new facility in the vicinity.

Mr. Bartlam stated the proposed action for the City Council tomorrow night is the approval of the bids and specifications for roof replacement at Fire Station No. 2 and Council may further deliberate at that time on the options associated with remodeling the facility versus constructing a new facility.

C. Comments by public on non-agenda items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 7:55 a.m.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, AUGUST 18, 2010**

C-1 Call to Order / Roll Call

The City Council Closed Session meeting of August 18, 2010, was called to order by Mayor Katzakian at 6:45 p.m.

Present: Council Member Hansen, Council Member Mounce, Mayor Pro Tempore Hitchcock, and Mayor Katzakian

Absent: Council Member Johnson

Also Present: Interim City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

C-2 Announcement of Closed Session

- a) Threatened Litigation: Government Code §54956.9(b); One Case; Potential Suit by Julie McDonnell against City of Lodi Based on Personal Injury

C-3 Adjourn to Closed Session

At 6:45 p.m., Mayor Katzakian adjourned the meeting to a Closed Session to discuss the above matter. The Closed Session adjourned at 7:00 p.m.

C-4 Return to Open Session / Disclosure of Action

At 7:09 p.m., Mayor Katzakian reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following action.

In regard to Item C-2 (a), negotiating direction was given. There was no reportable action.

A. Call to Order / Roll call

The Regular City Council meeting of August 18, 2010, was called to order by Mayor Katzakian at 7:09 p.m.

Present: Council Member Hansen, Council Member Mounce, Mayor Pro Tempore Hitchcock, and Mayor Katzakian

Absent: Council Member Johnson

Also Present: Interim City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

B. Pledge of Allegiance

C. Presentations

- C-1 Presentation of Government Finance Officers Association Certificate of Achievement for Excellence in Financial Reporting (CM)

Mayor Katzakian presented the Government Finance Officers Association Certificate of Achievement for Excellence in Financial Reporting to Deputy City Manager Jordan Ayers.

- C-2 Presentation by Tree Lodi on the Status of the 2006 Centennial Cork Oak Trees (PR)

Steve Dutra, representing Tree Lodi, gave a presentation on the status of the 2006 Centennial cork oak trees.

D. Consent Calendar (Reading; Comments by the Public; Council Action)

Council Member Hansen made a motion, second by Mayor Pro Tempore Hitchcock, to approve the following items hereinafter set forth, **except those otherwise noted**, in accordance with the report and recommendation of the City Manager.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Mounce, Mayor Pro Tempore Hitchcock, and Mayor Katzakian

Noes: None

Absent: Council Member Johnson

D-1 Receive Register of Claims in the Amount of \$6,003,206.64 (FIN)

Claims were approved in the amount of \$6,003,206.64.

D-2 Approve Minutes (CLK)

The minutes of August 3, 2010 (Shirtsleeve Session) and August 10, 2010 (Shirtsleeve Session) were approved as written.

D-3 Accept the Quarterly Investment Report as Required by Government Code Section 53646 and the City of Lodi Investment Policy (CM)

Accepted the quarterly investment report as required by Government Code Section 53646 and the City of Lodi Investment Policy.

D-4 Accept Quarterly Report of Purchases Between \$5,000 and \$20,000 (CM)

Accepted the quarterly report of purchases between \$5,000 and \$20,000.

D-5 Approve Plans and Specifications and Authorize Advertisement for Bids for Carnegie Forum Re-Roof Project (PW)

Approved the plans and specifications and authorized advertisement for bids for Carnegie Forum Re-Roof Project.

D-6 Approve Plans and Specifications and Authorize Advertisement for Bids for Fire Station No. 2 Re-Roof Project (PW)

This item was pulled from the agenda by Interim City Manager Rad Bartlam and will be brought back to the City Council for discussion at a future date.

D-7 Approve Plans and Specifications and Authorize Advertisement for Bids for State Route 99/Harney Lane Interim Improvement Project (PW)

Approved the plans and specifications and authorized advertisement for bids for State Route 99/Harney Lane Interim Improvement Project.

D-8 Adopt Resolution Approving Standardization of Traffic Signal Controllers/Cabinets and

Awarding Purchase of Controllers/Cabinets to Econolite Control Products, Inc., of Anaheim (\$31,000) (PW)

Adopted Resolution No. 2010-141 approving standardization of traffic signal controllers/cabinets and awarding the purchase of controllers/cabinets to Econolite Control Products, Inc., of Anaheim, in the amount of \$31,000.

D-9 Adopt Resolution Authorizing Change Order with F & H Construction, Inc., of Stockton, for Emergency Repairs at Lodi Station Parking Structure and Appropriating Funds (\$21,043.27) (PW)

Adopted Resolution No. 2010-142 authorizing change order with F & H Construction, Inc., of Stockton, for emergency repairs at Lodi Station Parking Structure and appropriating funds in the amount of \$21,043.27.

D-10 Adopt Resolution Authorizing the City Manager to Execute Contract Change Order with D. A. Wood Construction, Inc., of Empire, for Additional Asphalt Paving Removal and Replacement for Water Main Replacement Project No. 3 and Appropriating Funds (\$150,000) (PW)

This item was pulled for further discussion by Mayor Pro Tempore Hitchcock.

In response to Mayor Pro Tempore Hitchcock, Public Works Director Wally Sandelin stated that when the project was designed staff was hopeful that only a four-foot area would need to be paved but discovered it would be better to address the additional cracks in the pavement while the street was being worked on.

Mayor Pro Tempore Hitchcock made a motion, second by Council Member Mounce, to adopt Resolution No. 2010-146 authorizing the City Manager to execute contract change order with D. A. Wood Construction, Inc., of Empire, for additional asphalt paving removal and replacement for Water Main Replacement Project No. 3 and appropriating funds in the amount of \$150,000.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Mounce, Mayor Pro Tempore Hitchcock, and Mayor Katzakian

Noes: None

Absent: Council Member Johnson

D-11 Accept Improvements Under Contract for Hale Park, 209 East Locust Street, and Blakely Park, 1050 South Stockton Street, Playground Surfacing Improvements (PW)

Accepted the improvements under contract for Hale Park, 209 East Locust Street, and Blakely Park, 1050 South Stockton Street, Playground Surfacing Improvements.

D-12 Adopt Resolution Approving Improvement Agreements for Public Improvements for Reynolds Ranch, Phase II, Offsite and Onsite Improvements and Approving No-Parking Zones on All of Reynolds Ranch Parkway and Harney Lane from Stockton Street to Reynolds Ranch Parkway (PW)

Adopted Resolution No. 2010-143 approving Improvement Agreements for Public Improvements for Reynolds Ranch, Phase II, Offsite and Onsite Improvements and approving no-parking zones on all of Reynolds Ranch Parkway and Harney Lane from Stockton Street to Reynolds Ranch Parkway.

D-13 Adopt Resolution Approving Amendments to the San Joaquin Council of Governments Joint Powers Agreement (CM)

This item was pulled for further discussion by Mayor Pro Tempore Hitchcock.

In response to Mayor Pro Tempore Hitchcock, Interim City Manager Bartlam stated that San Joaquin Council of Governments (SJCOG) and County are going through a separation of sorts and the amendment authorizes SJCOG to use an independent third party auditor instead of the County auditor.

Mayor Pro Tempore Hitchcock made a motion, second by Council Member Hansen, to adopt Resolution No. 2010-147 approving amendments to the San Joaquin Council of Governments Joint Powers Agreement.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Mounce, Mayor Pro Tempore Hitchcock, and Mayor Katzakian

Noes: None

Absent: Council Member Johnson

D-14 Adopt Resolution Authorizing the City Manager to Submit a Joint Application with Eden Housing, Inc. to the State of California Department of Housing and Community Development for HOME Investment Partnerships Program Funding; and if Selected, the Execution of a Standard Agreement, any Amendments Thereto, and any Related Documents Necessary to Participate in the HOME Investment Partnerships Program (CD)

Adopted Resolution No. 2010-144 authorizing the City Manager to submit a joint application with Eden Housing, Inc. to the State of California Department of Housing and Community Development for HOME Investment Partnerships Program funding; and if selected, the execution of a Standard Agreement, any amendments thereto, and any related documents necessary to participate in the HOME Investment Partnerships Program.

D-15 Adopt Resolution Acknowledging Lodi Nut Company's Permitted Industrial Use at 1206, 1218, and 1230 South Fairmont Avenue (CM)

Adopted Resolution No. 2010-145 acknowledging Lodi Nut Company's permitted industrial use at 1206, 1218, and 1230 South Fairmont Avenue.

D-16 Adopt Resolution Approving Participation with the San Joaquin Valley Partner Cities in the Smart Valley Places Compact (CD)

This item was pulled for further discussion by Mayor Pro Tempore Hitchcock.

In response to Mayor Pro Tempore Hitchcock, Interim City Manager Bartlam stated the item has not yet gone to the Planning Commission because the City Council must first decide whether or not it wishes to participate in the program. Mr. Bartlam stated the program consists of a compact of the largest cities in the Central Valley with populations over 50,000 submitting a Department of Housing and Urban Development grant for sustainable communities as a consolidated body.

Neighborhood Services Manager Joseph Wood provided a brief PowerPoint presentation regarding the Smart Valley Places Compact. Specific topics of discussion included California Partnership for San Joaquin Valley, 2005 Executive Order, participants, sustainable growth,

funding opportunities, livability principles, application, and potential award.

In response to Mayor Pro Tempore Hitchcock, Mr. Bartlam stated the primary downside to participating in the compact is the amount of staff that can be dedicated to the program. Mr. Bartlam stated other cities had similar concerns and he is not sure why the City of Tracy is not participating in the program.

In response to Mayor Pro Tempore Hitchcock, Mr. Bartlam stated if the group is successful the City will receive money for projects it intends to do regardless such as the Development Code preparation and implementation of the General Plan.

In response to Mayor Katzakian, Mr. Bartlam stated the City would not be competing against other cities from the area by participating in the group program.

In response to Council Member Mounce, Mr. Bartlam stated the process is different from the Community Development Block Grant process because the City is not subservient to another entity but a partner in a broader group. He stated to date there are no administration fees.

Mayor Pro Tempore Hitchcock made a motion, second by Council Member Hansen, to adopt Resolution No. 2010-148 approving participation with the San Joaquin Valley Partner Cities in the Smart Valley Places Compact.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Mounce, Mayor Pro Tempore Hitchcock, and Mayor Katzakian

Noes: None

Absent: Council Member Johnson

D-17 Authorize the Mayor, on Behalf of the City Council, to Send a Letter of Opposition to AB 602 (Feuer), Land Use - Cause of Actions and Time Limitations (CM)

Authorized the Mayor, on behalf of the City Council, to send a letter of opposition to AB 602 (Feuer), Land Use - Cause of Actions and Time Limitations.

D-18 Set Public Hearing for October 6, 2010, to Receive Comments On and Consider Accepting the City of Lodi's Report on Water Quality Relative to Public Health Goals (PW)

Set public hearing for October 6, 2010, to receive comments on and consider accepting the City of Lodi's Report on Water Quality Relative to Public Health Goals.

E. Comments by the Public on Non-Agenda Items

THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES. The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted. Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

Nancy Swindell, representing AFSCME, spoke in regard to the desire of the group to obtain a 9/80 work schedule and the benefits associated with the same.

Robin Rushing spoke in regard to his concerns about transportation and Dial-A-Ride and the need to have Sunday service.

Kelly Suess spoke in support of the approval of the permitted use for Lodi Nut Company and thanked the staff for its efforts regarding the same.

F. Comments by the City Council Members on Non-Agenda Items

Council Member Hansen spoke in regard to his attendance at the San Joaquin Council of Governments' meeting, the ongoing construction with \$70 million, the approval of the permitted use for Lodi Nut Company, and the status of an additional cab company in the City.

Mayor Pro Tempore Hitchcock spoke in regard to the City and its employees existing to provide a service to the public and her preliminary concerns about a 9/80 work schedule.

Council Member Mounce spoke in regard to the conditions at Fire Station No. 2, the approval of the permitted use for Lodi Nut Company, a proposed local hiring ordinance, and the benefits of a 9/80 work schedule.

G. Comments by the City Manager on Non-Agenda Items

None.

H. Public Hearings

H-1 Public Hearing to Consider the Certification of the Final Mitigated Negative Declaration for the Harney Lane Interim Improvements Project (CD)

NOTE: This item is a quasi-judicial hearing and requires disclosure of ex parte communications as set forth in Resolution No. 2006-31

Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Katzakian called for the public hearing to consider the certification of the Final Mitigated Negative Declaration for the Harney Lane Interim Improvements Project.

Interim City Manager Rad Bartlam provided a PowerPoint presentation regarding the proposed certification of the Final Mitigated Negative Declaration for Harney Lane interim improvements. Specific topics of discussion included an aerial view of the site, site plan, California Environmental Quality Act application, environmental review process, proposed mitigation measures to minimize impacts to less than significant, findings of Initial Study, and public agencies consulted on the item.

In response to Mayor Pro Tempore Hitchcock, Public Works Director Wally Sandelin stated Cherokee Lane will remain open for the interim project and will close per the design when the interchange is actually constructed.

In response to Council Member Mounce, Mr. Sandelin stated Cherokee Lane cannot remain open during the interchange construction if the City complies with the State design requirements.

In response to Mayor Pro Tempore Hitchcock, Mr. Hansen stated a Highway 99 widening project is not included in any current plan San Joaquin Council of Governments is looking at. Mr. Bartlam stated that, even if there were to be a Highway 99 widening, there is sufficient right of way on the shoulder to accommodate a widening.

In response to Mayor Pro Tempore Hitchcock, Mr. Bartlam and Mr. Sandelin stated the proposed improvements are sufficient to address growth concerns over the next 15 to 20 years.

Mayor Katzakian opened the public hearing to receive comments from the public.

Mrs. Adams spoke in regard to her concerns about noise and dust as a result of the project construction. Mr. Bartlam stated her property should not be affected by the proposed interim improvements and mitigation measures will be undertaken as well.

In response to Mayor Pro Tempore Hitchcock, Mr. Sandelin stated the construction will begin at the end of October and be completed in March. Mr. Sandelin stated the funding sources are developer and regional transportation impact fees.

In response to Mayor Katzakian, Mr. Sandelin confirmed that the interim improvements will take approximately five months.

In response to Mr. Amesh, Mr. Bartlam stated the Melby intersection improvements will occur as a part of the improvement agreement and the intersection will be widened at the same time.

After receiving no further public comment, Mayor Katzakian closed the public hearing.

In response to Mayor Pro Tempore Hitchcock, Mr. Bartlam stated the funding is split 50/50 from both sources.

Council Member Mounce made a motion, second by Council Member Hansen, to adopt Resolution No. 2010-149 certifying the Final Mitigated Negative Declaration for the Harney Lane Interim Improvements Project.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Mounce, Mayor Pro Tempore Hitchcock, and Mayor Katzakian

Noes: None

Absent: Council Member Johnson

I. Communications

I-1 Appointment to the Lodi Planning Commission (CLK)

Council Member Mounce made a motion, second by Council Member Hansen, to make the following appointment:

Lodi Planning Commission

Nick Jones, Term to expire June 30, 2014

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Mounce, Mayor Pro Tempore Hitchcock, and Mayor Katzakian

Noes: None

Absent: Council Member Johnson

I-2 Post for Vacancies on the Lodi Arts Commission and the Lodi Budget/Finance Committee (CLK)

Council Member Mounce made a motion, second by Council Member Hansen, to direct the City Clerk to post for the following vacancies:

Lodi Arts Commission

One Vacancy (Walth), Term to expire July 1, 2012

Lodi Budget/Finance Committee

Kelly Brown, Term to expire June 30, 2012

Steven Reeves, Term to expire June 30, 2013

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Mounce, Mayor Pro Tempore Hitchcock, and Mayor Katzakian

Noes: None

Absent: Council Member Johnson

J. Regular Calendar

J-1 Consider Request for Fee Payment Agreement for 1222 Pixley Parkway (G & B Development, LLC) (PW)

Public Works Director Wally Sandelin provided a brief presentation regarding the request for a fee payment agreement for 1222 Pixley Parkway as outlined in the Council Communication.

In response to Council Member Hansen, Mr. Sandelin stated staff is recommending that the fee deferral not be granted because criteria has not been met in that there does not appear to be a demonstrated benefit to the community or a true economic need.

In response to Council Member Mounce, Mr. Sandelin stated he has spoken to former employee Sharon Welch and she indicated she did not commit any course of action and did not have the authority to do so.

In response to Mayor Pro Tempore Hitchcock, Mr. Sandelin stated staff could not find that the fee amount was included in the lease amount itself.

Bill Estanislau, representing G&B Development LLC, spoke of his concerns regarding the proposed staff recommendation to not award the fee deferral, previous dealings and history of transactions with the City, the inability of the developer to pay the requested fees, and the negative impact of the same for the developer, proposed tenant, and the City.

In response to Council Member Hansen, Mr. Estanislau stated the process to bid for the project included the developer following similar projects in other communities and including costs and fees in the bid. Mr. Estanislau stated he obtained the amount of the fees and the fee deferral from the City prior to submitting his bid for the project so that he could incorporate those costs into the bid.

In response to Council Member Hansen, Mr. Bartlam stated he met with Mr. Estanislau in March or April of 2010 and provided him with an overview of the process and criteria to obtain a fee deferral from the City Council.

In response to Council Member Hansen, Mr. Estanislau stated he incorporated the fees into his bid amount but as they would be deferred over the course of ten years.

In response to Mayor Pro Tempore Hitchcock, Mr. Estanislau stated the \$262,000 figure was submitted to the banks after he received a memorandum and direction from the City in April 2009.

In response to Mayor Pro Tempore Hitchcock, Mr. Bartlam stated the developer was told upfront in the meeting with Mr. Bartlam of the fee amount, that is was required upfront, and that it would be an uphill battle to receive a fee deferral.

In response to Mayor Pro Tempore Hitchcock, Mr. Bartlam stated the State cannot open the facility until the Certificate of Occupancy is issued. Mr. Estanislau stated the State of California and DMV is the tenant and it is unlikely that they will entertain any security and payment discussions.

In response to Council Member Mounce, Mr. Sandelin stated there were no unpaid impact fees from previous developers that were passed on to the applicant.

In response to Council Member Mounce, Mr. Bartlam stated that, while he is not sure of the specific details, he knows there are a handful of active fee agreements.

In response to Council Member Mounce, Mr. Schwabauer stated the proposed fee agreement was created by staff as part of the City Council agenda packet in the event that Council desired to enter into such agreement.

In response to Council Member Hansen, Mr. Bartlam provided an overview of the criteria needed to consider a fee deferral including the proposed benefit to the community and the financial hardship element, which was not met based on the information provided to staff by the developer.

Council Member Hansen made a motion, second by Council Member Mounce, to table the matter and reagendize for a future Council meeting to allow time for a closed session discussion and additional information.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Mounce, Mayor Pro Tempore Hitchcock, and Mayor Katzakian

Noes: None

Absent: Council Member Johnson

K. Ordinances - None

L. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 9:52 p.m.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, AUGUST 24, 2010**

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, August 24, 2010, commencing at 7:00 a.m.

Present: Council Member Hansen, Council Member Johnson, and Mayor Pro Tempore Hitchcock

Absent: Council Member Mounce, and Mayor Katzakian

Also Present: Interim City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

B. Topic(s)

B-1 Presentation on Transit Sunday Service Statistics, Transit Route and Schedule Modifications, and Parking Structure Security Services Update (PW)

Interim City Manager Rad Bartlam provided a brief introduction to the subject matter of transit status and statistics.

Transportation Manager/Senior Traffic Engineer Paula Fernandez provided a PowerPoint presentation regarding the transit service statistics, transit route and schedule modifications, and parking structure security services update. Specific topics of discussion included Fiscal Year 2009/10 transit passengers, total ridership for 2009/10, passengers per revenue hours, service costs, transit route and schedule modifications, parking structure security service statistics, and security services recommendations and implementation.

In response to Council Member Hansen, Ms. Fernandez stated the ridership statistics represent the numbers for Fiscal Year 2009/10.

In response to Council Member Hansen, Ms. Fernandez stated that, when hours were reduced, the fare collection and ridership numbers went down and therefore increased the subsidy per passenger.

In response to Council Member Hansen, Ms. Fernandez stated the subsidy is calculated based upon operating costs for a year minus the fare collected for that year, which results in the average subsidy.

In response to Council Member Johnson, Ms. Fernandez stated Sunday operating hours are 9:00 a.m. to 1:00 p.m.

In response to Council Member Hansen, Ms. Fernandez stated revenue hours are hours that all the buses are actually operating.

In response to Council Member Hansen, Ms. Fernandez stated the cost for Sunday service is approximately \$1,000 and the cost for Saturday service is approximately \$2,000.

In response to Council Member Hansen, Ms. Fernandez stated the cost for Sunday service is approximately \$1,000 for 90 passengers.

In response to Mayor Pro Tempore Hitchcock, Ms. Fernandez stated there was not a trend of

popular hours for Saturday service and currently the Saturday service runs from 7:45 a.m. to 3:09 p.m.

In response to Council Member Hansen, Ms. Fernandez stated the minor modifications are proposed to start on September 7 unless the City Council directs otherwise.

In response to Council Member Hansen, Ms. Fernandez stated staff has not looked into the school district paying toward providing the bus service in light of the amount of student ridership. Ms. Fernandez stated the City of Stockton may have such a program between the City and the Stockton Unified School District and staff will research and bring back to Council additional information regarding the same.

In response to Myrna Wetzel, Ms. Fernandez stated the new fare box card does not work like a debit card.

In response to Council Member Hansen, Ms. Fernandez stated staff has received the majority of equipment for the new fare boxes and installation is ready to begin.

In response to Council Member Hansen, Ms. Fernandez stated the route modification will add a stop for Lodi Memorial Hospital, which will take riders to the back side of the hospital as requested.

In response to Council Member Hansen, Ms. Fernandez stated 32 people participated in the public meetings. She stated sufficient notice was provided in English and Spanish through newspaper publications and flyer distribution.

In response to Council Member Johnson, Ms. Fernandez stated there have been arrests in the parking garage over the last few months.

In response to Myrna Wetzel, Ms. Fernandez stated the arrests occurred at all different hours.

In response to Council Member Hansen, Ms. Fernandez stated security was on duty when the ten thefts occurred in April, May, and June.

In response to Mayor Pro Tempore Hitchcock, Ms. Fernandez stated staff would need to check with the Police Department regarding specific incident details but word is out that violators can be arrested in the parking structure.

In response to Council Member Hansen, Ms. Fernandez stated it is expected that the grant funds for the security cameras will be received soon. She stated the security company can manage and monitor the security cameras once installed.

In response to Council Member Hansen, Ms. Fernandez stated security cameras will not be installed at the small lot because it is not a transit facility.

Jason Oringer of SEIU spoke of his concerns regarding the Securitas company and training of employees. In response to Council Member Hansen, Mr. Oringer stated Securitas employees are non-unionized and SEIU comes from a labor perspective and would like to see industry standards for security training raised.

In response to Council Member Hansen, Jim Beltz, representing Securitas, provided an overview of the hiring and training process for employees. Mr. Beltz stated the current site supervisor has been on location since 2004 and has recently asked to be transferred based on the recent media attention.

In response to Council Member Hansen, Mr. Beltz stated Securitas has implemented the use of bicycles and increased the number of officers on duty to address the recent security concerns at the parking structure. He stated officers do follow-up as necessary and sometimes ask for identification depending upon the situation.

In response to Council Member Hansen, Mr. Beltz stated in two years of managing the account this is the first time he is having challenges with this site and affirmative steps have been taken to address the concerns.

In response to Council Member Hansen, Mr. Beltz stated Securitas employs approximately 800 people in Lodi, Stockton, and Modesto.

In response to Council Member Johnson, Mr. Beltz stated Securitas has experience in operating and managing security cameras as a number of their existing clients have security cameras. Mr. Beltz stated Securitas has added to the foot patrol additional officers and bicycles to address recent concerns.

In response to Council Member Hansen, Mr. Beltz stated the company has onsite and national communication centers, provides services in hospitals, and monitoring will be onsite for the parking structure. Ms. Fernandez stated staff is researching options for onsite monitoring by looking at other local agencies and how they address similar concerns.

In response to Mayor Pro Tempore Hitchcock, Mr. Beltz stated golf carts are expensive and there is no place to park. Mr. Beltz stated he believes the concerns will be addressed with the implementation of bicycle patrol and additional officers onsite.

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 7:50 a.m.

ATTEST:

Randi Johl
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Approve Specifications and Authorize Advertisement of Bids for 25,000 Feet of Insulated with Jacketed Concentric Neutral Underground Cable (\$50,000) (EUD)

MEETING DATE: September 1, 2010

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Approve specifications and authorize advertisement of bids for 25,000 feet of insulated with jacketed concentric neutral underground cable.

BACKGROUND INFORMATION: The #4/0 15 kV underground cable is a standard component of the City's electric power network. The last procurement for this cable was made in May 2008.

This underground cable will be used in new developments and in existing electrical distribution system upgrades and replacements. Planned projects requiring this cable include the Reynolds Ranch Development at the Costco site and various underground maintenance and reliability upgrades throughout the City. The existing inventory level is insufficient to meet the needs of current projects.

In order to meet existing project requirements and anticipated needs over the next few years, staff recommends purchasing 25,000 feet of #4/0 AWG 15 kV underground electric cable.

FISCAL IMPACT: Estimated cost is \$50,000.

FUNDING: Included in FY 2010/11 Budget Account No. 160651.7713

Jordan Ayers
Deputy City Manager/ Internal Services Director

Elizabeth A. Kirkley
Electric Utility Director

PREPARED BY: Demy Bucaneg, Jr. -PE, Assistant Electric Utility Director
Weldat Haile PE, Senior Power Engineer

EAK/DB/lst

APPROVED: _____
Konradt Bartlam, Interim City Manager



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing Procurement of Two Padmounted Liquid Insulated Vacuum Switchgear with Fault Interrupters from Trayer Engineering Corporation of San Francisco, California (\$72,000) (EUD)

MEETING DATE: September 1, 2010

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution authorizing procurement of two padmounted, liquid insulated, vacuum switchgear with fault interrupters from Trayer Engineering Corporation of San Francisco, California in an amount not to exceed \$72,000.

BACKGROUND INFORMATION: The Reynolds Ranch Development Project requires the installation of two padmounted, liquid-insulated, vacuum switchgear with fault interrupters for the Costco site. Switchgear is not an inventory item and is purchased on an as-needed basis. The equipment allows the utility to complete the line extension in Reynolds Ranch Development Project for Costco construction.

On May 5, 2010, the City Council awarded the procurement of three padmounted switchgear to Trayer Engineering Corporation for the DeBenedetti Park Project Phase 1 with one as a spare. The proposal by Trayer complied with the technical specifications and was the only bid received.

The Electric Utility Department (EUD) has been using Trayer padmounted switchgear in the City's electrical distribution system for more than 10 years. According to EUD's construction division, the equipment has proven easy and safe to operate with minimum maintenance. Staff considers Trayer's July 2010 price quotes reasonable and within the estimated budget. Lodi Municipal Code §3.20.070 authorizes dispensing with bids for purchases of supplies, services, or equipment when certain criteria are met. Cost savings are realized when EUD's inventory can be kept to a minimum by utilizing one manufacturer for switchgear.

Due to the long-lead time of this equipment, staff recommends City Council approval of a resolution to award the procurement of two padmounted, liquid-insulated, vacuum switchgear with fault interrupters to Trayer in an amount not to exceed \$72,000 including tax and shipping.

FISCAL IMPACT: Procurement cost will be recovered from future development through the City's Full Cost Recovery Rule in accordance with Resolution No. 2006-234, resulting in no net cost to EUD.

FUNDING: Included in FY 2010/11 Budget Account No. 161652.

Jordan Ayers
Deputy City Manager/Internal Services Director

Elizabeth A. Kirkley
Electric Utility Director

PREPARED BY: Demy Bucaneg, Jr., P.E., Assistant Electric Utility Director

APPROVED: _____
Konradt Bartlam, Interim City Manager

RESOLUTION NO. 2010-_____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
THE PURCHASE OF TWO (2) PADMOUNTED LIQUID INSULATED
VACUUM SWITCHGEAR WITH FAULT INTERRUPTERS FROM
TRAYER ENGINEERING CORPORATION

=====

WHEREAS, the Reynolds Ranch Development Project requires the installation of two (2) padmounted, liquid-insulated, vacuum switchgear with fault interrupters for the Costco site; and

WHEREAS, on May 5, 2010, the City Council awarded the procurement of three (3) padmounted switchgear to Trayer Engineering Corporation (Trayer) for the DeBenedetti Park Project Phase 1 with one (1) as a spare; and

WHEREAS, the proposal by Trayer was compliant with the technical specifications without exception and the only bid received; and

WHEREAS, Lodi Municipal Code §3.20.070 authorizes dispensing with bids for purchases of supplies, services, or equipment when it is in the best interest of the City to do so; and

WHEREAS, procurement cost will be recovered through the City's Full Cost Recovery Rule in accordance with Resolution No. 2006-234, resulting in no cost to EUD; and

WHEREAS, staff recommends that the two (2) padmounted, liquid-insulated, vacuum switchgear with fault interrupters be purchased sole source from Trayer Engineering Corporation of San Francisco, California, which is the same company that successfully bid for switchgear for the DeBenedetti Park Project.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby approves the purchase of two (2) padmounted, liquid-insulated, vacuum switchgear with fault interrupters for the Reynolds Ranch Development Project at the Costco site from Trayer Engineering Corporation of San Francisco, California in an amount not to exceed \$72,000 including tax and shipping.

Dated: September 1, 2010

=====

I hereby certify that Resolution No. 2010-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held September 1, 2010, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing the Purchase of Hewlett Packard (HP) Mass Storage Device from Entisys Solutions, Inc. of Concord, CA, and Appropriating Funds (\$35,000)

MEETING DATE: September 1, 2010

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution authorizing the purchase of Hewlett Packard (HP) Mass Storage Device from Entisys, of Concord, CA, and appropriating funds in the amount of \$35,000.

BACKGROUND INFORMATION: As part of the City's electric and water meter installation program currently underway, new computer hardware and software will be needed to accommodate automated meter reads from a fixed network. Part of the required equipment is mass data storage.

Information Systems Division (ISD) has researched various brands and models and recommends the purchase of two HP Storage Area Network (SAN) devices that are certified by HP as meeting the required performance specifications, and are compatible with the City's server equipment.

HP indicates a new model of the device is twice the price of the one it replaced. HP further informed staff that a limited number, perhaps as few as four, of the earlier models are still available at half the price of the new model if purchased from its designated reseller, Entisys. Staff sees no compelling reason to purchase the new model and recommends buying the older model at half the price. HP confirms the older model meets or exceeds the performance requirements for the fixed network.

Lodi Municipal Code 3.20.070, Option 5, allows the dispensing of bids when a purchase is in the best interest of the City. Time is of the essence in this purchase as there are only four units remaining at half the price of the new model, saving the City approximately \$30,000. Staff recommends the purchase of two HP P4500 3.6TB SAS Storage Rmkt Systems at \$15,283 each, plus one year support and related taxes and shipping costs.

Qty	Prod #		Net Price	Net Price
2	AT005AR	HP P4500 3.6TB SAS Storage Rmkt System	\$15,283.00	\$30,566.00
2	HA110A1	HP 1y Support Plus 24 SVC (support uplift to 24x7, 4 hour response)	\$550.05	\$1,100.10
			Shipping & Handling (Estimate):	\$129.14
			Tax (estimate):	\$2,770.75
			Grand Total:	\$34,565.99

APPROVED: _____
Konradt Bartlam, Interim City Manager

FISCAL IMPACT: Purchasing at this time will realize a 50-percent cost savings over the cost of a comparative new model.

FUNDING: Included in FY 2010/11 Capital Budget as follows:
EUD Capital Account No. 161000.1820 - \$17,500
Water Capital Account No. 1811201 - \$17,500

Jordan Ayers
Deputy City Manager/Internal Services Director

Elizabeth A. Kirkley
Electric Utility Director

F. Wally Sandelin
Public Works Director



Date: 07/12/2010

Quote #: CofL-P4500 2x 3.6TB SAS-07122010

Entisys Solutions, Inc.

Doug Kirsten

Jaro Simek

1855 Gateway Blvd, Suite 730

Concord, CA 94520

dougk@entisys.com

jaros@entisys.com

City of Lodi

Ship to:

TBD

Description

Qty	Prod #		Net Price	Net Price
2	AT005AR	HP P4500 3.6TB SAS Storage Rmkt System	\$15,283.00	\$30,566.00
		Includes:		
		- 15K SAS or D16 SATA HDDs		
		- 2GB RAM		
		- Redundant hot swap power supplies		
		- 512 MB battery backed cache		
		- Support for RAID 5, 6, 10		
		- Dual port 1Gbit NIC		
		- Integrated DVD/CD-Rom		
		- 1 year 9x5 software phone support & software updates		
		- 1 year hardware maintenance on-site, next business day		
		OPTIONAL ITEMS:		
2	HA110A1	HP 1y Support Plus 24 SVC (support uplift to 24x7, 4 h	\$550.05	\$1,100.10

Hardware Total: \$30,566.00

Software Total: \$0.00

HP Support Total: \$1,100.10

Installation Total: \$0.00

Sub Total: \$31,666.10

Shipping & Handling (Estimate): \$129.14

Tax (estimate): TBD

Grand Total: \$31,795.24

Price and availability subject to change.

RESOLUTION NO. 2010-_____

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE PURCHASE OF TWO HEWLETT
PACKARD MASS STORAGE DEVICES FROM ENTISYS
SOLUTIONS, INC.

=====

WHEREAS, new computer hardware and software will be needed to accommodate automated meter reads from a fixed network as part of the City's electric and water meter installation program currently underway; and

WHEREAS, part of the needed equipment is for mass data storage; and

WHEREAS, the manufacturer (HP) has indicated that a new model of the device is now available, but is twice the price of the one it replaced; and

WHEREAS, staff does not see a compelling reason to purchase the new model and recommends buying the older model at half the price; and

WHEREAS, Lodi Municipal Code 3.20.070, Option 5, allows the dispensing of bids when City Council determines it is the best method of purchase, and staff recommends the purchase of two Hewlett Packard P4500 3.6TB SAS Storage Rmkt Systems at \$15,283 each, plus one year support and related taxes and shipping costs.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the purchase of two Hewlett Packard P450 Storage Rmkt Systems from Entisys Solutions, Inc. of Concord, California in an amount not to exceed \$35,000 including tax and shipping.

Date: September 1, 2010

=====

I hereby certify that Resolution No. 2010-____ was passed and adopted by the Lodi City Council in a regular meeting held September 1, 2010, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Approving Contracts for Three Public Benefits Programs, Authorizing Execution by the City Manager, and Allocating Funds (\$104,800) (EUD)

MEETING DATE: September 1, 2010

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution approving contracts for three public benefits programs, authorizing execution by the City Manager, and allocating funds (\$104,800).

BACKGROUND INFORMATION: **Lodi Keep Your Cool Program:** This will be the third year for the direct-install energy conservation program. Lodi Electric Utility's public benefit funds provide incentives for G1 and G2 commercial customers, such as restaurants, mini-markets and small grocery stores, to install energy-efficiency measures in refrigeration. For the 2010-2011 program year, the measures include: high-efficiency motors, fan motor controllers, anti-sweat heater controls, and infiltration barriers, such as gaskets, strip curtains and door closers. Thirty to 50 percent of a restaurant or grocery store's annual energy costs are consumed by refrigeration. Depending on customer participation, the program will save an estimated 150,000 to 300,000 kilowatt-hours annually, thus reducing operating costs for these customers. Last year, Lodi Keep Your Cool provided 22 commercial customers more than 400,000 kilowatt-hours of energy savings. The program (including materials and installation) will again be conducted by the Bay Area Gasket Guy under a professional services agreement for \$50,000.

Lodi Vending Miser Installation Program: This is a new energy conservation program for the utility's commercial/industrial customers. SBW Consulting of Bellevue, Wash., will administer this direct-install program. Under the \$25,000 professional services agreement, SBW will locate and retrofit over 110 inefficient cold beverage vending machines with an energy management system that automatically reduces energy load (shutting off lighting and cycling the unit's motor off) when the machine is not in frequent use. Annual energy savings are estimated to top 175,000 kilowatt-hours for 110 vending machines.

Lodi On-Line Energy Audit Program: Lodi Electric Utility offers on-line energy audits for residential customers. The on-line service, known as the HomeEnergySuite, is provided by the firm APOGEE Interactive. The on-line tool provides customers with the ability to determine how their monthly energy dollars are expended. The tool also provides access to lighting and appliance calculators, an educational "Kids Korner" and an energy conservation reference library. On average, 50 to 75 customers per month use this free service. APOGEE Interactive maintains an on-line database, provides monthly updates on how many customers use the service, and continually updates the energy conservation reference library with new and emerging energy technologies. Newly added for this year is a small-business on-line

APPROVED: _____
Konradt Bartlam, Interim City Manager

energy audit program, similar to the residential program. The professional services agreement with APOGEE Interactive for the 2010/2011 fiscal year is \$29,800.

EUD staff recommends approval for the three programs, which use budgeted public benefit funds:

- 1) Bay Area Gasket Guy to administer the Lodi Keep Your Cool Program and install designated energy efficiency improvements (\$50,000).
- 2) SBW Consulting, Incorporated, to administer the Lodi VendingMiser Installation Program and retrofit cold beverage vending machines (\$25,000).
- 3) APOGEE Interactive to provide on-line services for the Lodi Energy Audit Program (\$29,800).

Two of these entities have provided excellent service to the City of Lodi over the years. SBW Consulting has experience/professional service contracts with other municipal utilities, and pioneered the "Vending-Miser" technology.

FISCAL IMPACT: The three programs/contracts will account for \$104,800 in Public Benefit Program funds allocated in the Fiscal Year 2010/2011 budget. Based upon the projected 325,000-475,000 kilowatt hour energy savings per year (for two of the aforementioned programs), participating customers' annual combined energy savings will be \$50,000 to \$70,000.

FUNDING: Included in Fiscal Year 2010/11 Budget
Account 164605 – Public Benefits (Demand-side Management) - \$104,800

Jordan Ayers
Deputy City Manager/Internal Services Director

Elizabeth A. Kirkley
Electric Utility Director

Prepared By: Rob Lechner, Manager, Customer Service & Programs

EAK/KW/RSL/1st

AGREEMENT FOR PROFESSIONAL SERVICES

ARTICLE 1 PARTIES AND PURPOSE

Section 1.1 Parties

THIS AGREEMENT is entered into on July 26, 2010, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and Castrovilla, Inc., dba Bay Area Refrigeration (hereinafter "CONSULTANT").

Section 1.2 Purpose

CITY selected the CONSULTANT to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONSULTANT for the Lodi Keep Your Cool program (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONSULTANT acknowledges that it is qualified to provide such services to CITY.

ARTICLE 2 SCOPE OF SERVICES

Section 2.1 Scope of Services

CONSULTANT, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A.

Section 2.2 Time For Commencement and Completion of Work

CONSULTANT shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONSULTANT shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONSULTANT shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be counted against CONSULTANT's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONSULTANT shall remain

in contact with reviewing agencies and make all efforts to review and return all comments.

Section 2.3 Meetings

CONSULTANT shall attend meetings as may be set forth in the Scope of Services.

Section 2.4 Staffing

CONSULTANT acknowledges that CITY has relied on CONSULTANT's capabilities and on the qualifications of CONSULTANT's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONSULTANT, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONSULTANT of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONSULTANT of any changes of CONSULTANT's project staff prior to any change.

CONSULTANT represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein. CONSULTANT represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONSULTANT to practice its profession, and that CONSULTANT shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

Section 2.5 Subcontracts

Unless prior written approval of CITY is obtained, CONSULTANT shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

ARTICLE 3 COMPENSATION

Section 3.1 Compensation

CONSULTANT's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Exhibit B and incorporated by this reference.

CONSULTANT shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

Section 3.2 Method of Payment

CONSULTANT shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONSULTANT's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

Section 3.3 Costs

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY.

Section 3.4 Auditing

CITY reserves the right to periodically audit all charges made by CONSULTANT to CITY for services under this Agreement. Upon request, CONSULTANT agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONSULTANT agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONSULTANT agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONSULTANT further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

ARTICLE 4
MISCELLANEOUS PROVISIONS

Section 4.1 Nondiscrimination

In performing services under this Agreement, CONSULTANT shall not discriminate in the employment of its employees or in the engagement of any sub

consultant on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

Section 4.2 ADA Compliance

In performing services under this Agreement, CONSULTANT shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

Section 4.3 Indemnification and Responsibility for Damage

CONSULTANT to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONSULTANT, any subcontractor employed directly by CONSULTANT, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

Section 4.4 No Personal Liability

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

Section 4.5 Responsibility of CITY

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

Section 4.6 Insurance Requirements for CONSULTANT

CONSULTANT shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

Section 4.7 Successors and Assigns

CITY and CONSULTANT each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONSULTANT shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY

Section 4.8 Notices

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY: City of Lodi
 221 West Pine Street
 P.O. Box 3006
 Lodi, CA 95241-1910

To CONSULTANT: Bay Area Refrigeration
 253 Polaris Ave.
 Mountain View, CA 94043

Section 4.09 Cooperation of CITY

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

Section 4.10 CONSULTANT is Not an Employee of CITY

CONSULTANT agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of CITY and not an employee of CITY. CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONSULTANT meet specific standards without regard to the manner and means of accomplishment thereof.

Section 4.11 Termination

CITY may terminate this Agreement, with or without cause, by giving CONSULTANT at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONSULTANT shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONSULTANT shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONSULTANT with third parties in reliance upon this Agreement.

Section 4.12 Confidentiality

CONSULTANT agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONSULTANT and clearly marked by CONSULTANT as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONSULTANT. CONSULTANT acknowledges that CITY is subject to the California Public Records Act.

Section 4.13 Applicable Law, Jurisdiction, Severability, and Attorney's Fees

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

Section 4.14 City Business License Requirement

CONSULTANT acknowledges that Lodi Municipal Code Section 3.01.020 requires CONSULTANT to have a city business license and CONSULTANT agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

Section 4.15 Captions

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

Section 4.16 Integration and Modification

This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

Section 4.17 Contract Terms Prevail

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

Section 4.18 Ownership of Documents

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONSULTANT shall allow CITY to inspect all such documents during CONSULTANT's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONSULTANT to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONSULTANT harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

Section 4.19 Authority

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement as of the date first above written.


CITY OF LODI, a municipal corporation

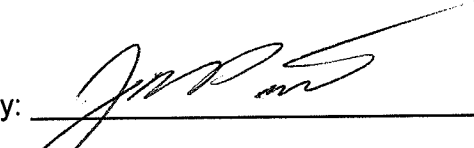
ATTEST:

By _____
RANDI JOHL
CITY CLERK

By _____
KONRADT BARTLAM
INTERIM CITY MANAGER

APPROVED AS TO FORM:
D. STEPHEN SCHWABAUER, City Attorney

By _____
Janice D. Magdich
Deputy City Attorney 

By: 
Its: John Pink
President

Attachments:

Exhibit A – Scope of Services

Exhibit B – Fee Proposal

Exhibit C – Insurance Requirements

Lodi Keep Your Cool Program

Phase II Program Proposal March 25, 2010

Program Abstract

Lodi Keep Your Cool focuses on improving existing commercial refrigeration systems, which are one of California's most energy intensive end uses¹. Business owners and facility managers are encouraged to retrofit their refrigeration equipment by utilizing a suite of measures that optimize the efficiency of their existing refrigeration system. Each measure is highly cost-effective on its own merits, but provides the greatest return when installed alongside the others.

Phase I Review and Results

Phase I of the program highlighted gaskets, strip curtains and automatic door closers. The intent of focusing on these "simple" measures was to lower the bar for customer participation, offering "no-brainer" projects that maximized participation. Phase I was successful in signing up 38 businesses to the program. Measure totals were:

Gaskets: 5,863 linear feet
Strip Curtains: 1,633 square feet
Door Closers: 23 door closers

This yielded a calculated savings of 1,369,249 kWh.

While successful, the program achieved a penetration of only 12% of potential businesses. This was approached the targeted rate of 15% but demonstrates that ample opportunity among this customer base still exists. For comparison, the Santa Clara Keep Your Cool program, which started one year earlier than Lodi Keep Your Cool, achieved a participation rate of 30%.

Phase II Strategy

In Phase II, the *Keep Your Cool* program continues its focus on energy saving opportunities within food service and grocery industries where commercial refrigeration equipment represents a significant portion of energy demand. Between 30% and 50% of the electricity used in food service, grocery stores, liquor stores, convenience stores and bars is consumed by refrigeration. While most communities reserve additional opportunity for the Phase I measures, Phase II emphasizes new measures that can help past participants reach the next level of energy efficient operations. The result will be greater and longer lasting savings per project at a cost/kWh equal to or lower than Phase I.

The key developments for Phase II are:

- More comprehensive measure list
- Pre-implementation training for participating utilities (if desired)
- Comprehensive incentives and possible customer financing options

¹ CEUS Survey, pg. 7

Collectively these improvements will yield an even more effective program that matches the needs of each utility and their customers, while continuing to be simple to implement.

Targeted Measures

The proposed Phase II measure list represents the broadest set of highly reliable and easy to implement efficiency opportunities. Most qualifying customer will be able to benefit from several of these measures and receive a comprehensive refrigeration retrofit.

Lodi Keep Your Cool best practice measures will include:

- Programmable Electronically Commutated Motors
- ECM Evaporator Fan Motor Controllers
- Anti-Sweat Heater (ASH) Controls
- Infiltration Barriers (gaskets, strip curtains and door closers)

Table 1 - KYC Measures illustrates the expanded measure list for Phase II, along with key measure statistics.

- Total Resource Cost (TRC) test values include direct measure installation costs and overhead costs
- Levelized cost is based on the Effective Useful Life of the measure, Discount Rate, Net to Gross ratio, energy savings and measure installed cost per unit.

Measure	Unit Type	Annual kWh/Unit	kW/unit	EUL	NTG	D.Rate	Direct Cost/Unit	Direct Install Cost/kWh	Levelized Cost/kWh	TRC/Unit
Walk-in Closer, freezer	Closer	2415	0.343	8	0.80	4.5%	\$150.00	\$0.06	\$0.011	10.30
Reach-in Closer, freezer	Closer	1210	0.235	8	0.80	4.5%	\$125.00	\$0.10	\$0.019	6.20
Walk-in Closer, cooler	Closer	979	0.145	8	0.80	4.5%	\$150.00	\$0.15	\$0.028	4.18
Reach-in Closer, cooler	Closer	405	0.079	8	0.80	4.5%	\$125.00	\$0.31	\$0.056	2.07
EC Motor Controller (8 fans)	Controller	4414	0.000	8	0.96	4.5%	\$625.00	\$0.14	\$0.021	5.42
EC Motor Controller (4 fans)	Controller	2207	0.000	8	0.96	4.5%	\$625.00	\$0.28	\$0.043	2.71
EC Motor Controller (3 fans)	Controller	1655	0.000	8	0.96	4.5%	\$625.00	\$0.38	\$0.057	2.03
EC Motor Controller (2 fans)	Controller	1104	0.000	8	0.96	4.5%	\$625.00	\$0.57	\$0.086	1.36
ASH Controller, frame only	Lin.Ft.	395	0.008	12	0.96	4.5%	\$58.00	\$0.15	\$0.016	7.84
ASH Controller w/glass heat	Lin.Ft.	395	0.008	12	0.96	4.5%	\$58.00	\$0.15	\$0.016	7.84
Door Gasket	Lin.Ft.	44	0.010	4	0.80	4.5%	\$8.00	\$0.18	\$0.061	1.76
Programmable EC Motor (3/4 HP, 5.6A)	Motor	4507	0.342	8	0.80	4.5%	\$479.00	\$0.11	\$0.019	6.02
Programmable EC Motor (1/2 HP, 4.0A)	Motor	3733	0.283	8	0.80	4.5%	\$459.00	\$0.12	\$0.022	5.20
Programmable EC Motor (1/3 HP, 2.6A)	Motor	2315	0.176	8	0.80	4.5%	\$369.00	\$0.16	\$0.029	4.02
Programmable EC Motor (1/15 HP, 1.8A)	Motor	1036	0.082	8	0.80	4.5%	\$219.00	\$0.21	\$0.038	3.03
Programmable EC Motor (1/15 HP, 3.2A)	Motor	1488	0.113	8	0.80	4.5%	\$389.00	\$0.26	\$0.047	2.45
Programmable EC Motor (1/47 HP, 1.1A)	Motor	580	0.041	8	0.80	4.5%	\$157.50	\$0.27	\$0.049	2.36
Strip Curtain, warehouse	Sq.Ft	1472	2.850	4	0.80	4.5%	\$20.00	\$0.01	\$0.005	23.55
Strip Curtain, walk-in	Sq.Ft	167	0.282	4	0.80	4.5%	\$9.87	\$0.06	\$0.020	5.41

Table 1 - KYC Measures

Program Costs

The program cost structure is based on the actual cost of the installed measures. Based on the market assessment, Lodi's budget and the costs of the different measures the following is the targeted cost breakdown by measure for Lodi Keep Your Cool:

Measure (units)	Measure Cost/Unit	Total kWh Potential	Total kW Potential	Target Penetration Rate	100% DI Incentive Cost/kwh	Projected kWh Savings	Total Incentive Budget
Gaskets (Inr. Ft.)	\$8.00	637,758	148	5.0%	\$0.182	31,939	\$5,812.89
Strip Curtains (sq. ft.)	\$9.87	534,116	902	10.0%	\$0.059	53,412	\$3,156.75
Door Closers (ea.)	\$150.00	61,620	10	5.0%	\$0.187	3,081	\$576.75
EC Motors (ea.)	\$223.23	1,139,363	105	9.0%	\$0.203	102,185	\$20,743.52
ECM Fan Controls (ea.)	\$625.00	427,660	0	15.0%	\$0.213	64,167	\$13,667.58
ASH Controls (ea.)	\$58.00	396,312	8	10.0%	\$0.147	39,703	\$5,836.35
Total Incentive Costs							\$49,793.83

Cost Effectiveness

Total Resource Cost Test (TRC) measures the cost and benefits of an efficiency measure as a resource option based on the total cost of the measure to the utility's service territory, including both participant and utility costs. Per *Table 1 - KYC Measures*, Phase II measures range from a TRC of 1.76 to a TRC of 23.55. Measures that achieve a TRC of 1.0 or greater are considered to be cost-effective; the KYC Program TRC is conservatively estimated to fall within the range of 3.5 – 4.0 based on the full suite of measures.

Levelized Cost calculations are often used to represent, on a consistent basis, the cost of energy saved by an efficiency program that includes various measures with different useful lives. Unlike the TRC test, the calculation only includes utility costs; therefore, the program levelized cost will vary depending on the measure portfolio and utility funding levels. The KYC Program levelized cost is estimated to be **\$0.03/kWh** as a direct install program (100% utility funded with no customer co-pays) that includes the proposed suite of measures. The chart below summarizes projected kWh/kW savings and associated costs.

Proj. kWh Savings	294,487
Proj. kW Reduction	89
Proj. cost/kwh	\$0.1691
Proj. Levelized Cost/kWh	\$0.030

Participant Recruitment

The *Keep Your Cool* program will use the same successful recruitment strategy from previous phases of the program. Humitech works with utility partners to engage in a comprehensive marketing and recruitment of potential customers, including the use of utility- generated customer lists, targeted

mailings, cold calls, website material, and on-site energy audits. Based on the available budget, Castrovilla anticipates capturing 8% of the potential energy savings for the proposed measures.

Conclusion

Castrovilla, Inc dba Bay Area Refrigeration (formerly Humitech, LLC dba Bay Area Gasket Guy), is proud to have performed thousands of energy efficiency retrofit projects throughout the Bay Area, Central and Northern California saving millions of kilowatt hours of energy. Due to the fact that existing IOU and IOU-administered programs do not operate in POU communities, KYC has done significantly more targeted energy efficiency projects in those areas than other California communities. Through this program Lodi Electric Utility business customers can expect the same benefits their colleagues and competitors in other cities have enjoyed.

Appendix 1

Keep Your Cool Comprehensive Program Description

I. Measure Descriptions, Expected Energy Savings and Peak Demand Reduction

Programmable Electronically Commutated Motors + Evaporator Fan Controller

Walk-in cooler evaporator fan motors run non-stop 24 hours a day, 365 days a year. Walk-in freezer motors may stop briefly for defrost cycles, but otherwise also operate continuously. EC motors up to 1/15 horsepower use less than half of the electricity than existing shaded pole motors and run much cooler, introducing far less heat to the refrigeration system. EC Motors from 1/5 to 3/4 horsepower consume roughly 1/3 less power and also greatly reduce heat load.

Walk-in ECM effectiveness is nearly doubled (97% improvement) by the inclusion of an evaporator fan controller. Evaporator fan controllers cycle fan motors run-time in parallel with the compressor. A compressor for a walk-in cooler/freezer runs only between 40% and 60% of the time, but the fans run at full speed 100% of the time. This is not necessary, so the fan controller senses whether the compressor is sending refrigerant to the evaporator. When the compressor is not running the fan RPMs are reduced to as low as 1/3 of the normal level, dropping energy consumption by 88% (fan law: 1/3 reduction in airflow = 1/9 reduction in power). Fan controllers can be installed on standard motors (shaded pole or permanent split capacitor) but when installed in conjunction with programmable EC Motors the savings are nearly doubled. In addition to the fan savings, the heat load is reduced significantly, lowering the compressor duty cycle by as much as 25%.

Non-energy benefits include higher quality product, as reduced fan speed reduces drying of meat and produces which are commonly stored uncovered. It also reduces noise levels which contribute to worker efficiency and a more pleasant workspace.

The savings for EC Motors² and Controllers³ are calculated using a spreadsheet that has been accepted by PG&E and vetted by numerous third-party programs. Savings are calculated on a per site basis taking the existing motor specifications and putting them into a spreadsheet which factors in the new motor efficiency as well as compressor and condenser savings from reduced heat load. The following are examples of two typical projects:

- A restaurant cooler with 3 shaded pole fan motors and one evaporator: Each motor runs at 115 volts and 1.8 amps. Reduction in fan load and heat load including a 25% reduction in compressor duty cycle will save 5,932 kWh/year. With a EUL of 8 years, the levelized cost is 4 cents per kWh (\$1,359 install cost).
- A convenience store cooler with 8 shaded pole fan motors and 2 evaporators: Each motor runs at 208 volts and 1.0 amps. Reduction in fan load and heat load including a 25% reduction in compressor duty cycle will save 15,896 kWh/year. Based on the same savings assumptions, the levelized cost is 2.8 cents per kWh (\$2,532 install cost).

² ECM Energy Monitoring 2006 Report by Food Service Technology Center.pdf

³ ECMotor Analysis 11-03-09.xls; Calculations and Factors Explanation - ECM.pdf; New ECMotor Analysis Sheet Comments.pdf

EC Motors are expected to save a weighted average of 1,097 kWh/motor and reduce peak demand by 0.0845/motor. The expected savings and peak demand reduction per site will vary based on the type of establishment, ranging from 2,195 kWh and 0.169 kW to 26,334 kWh and 2.028 kW. The inclusion of an Evaporator Fan Controller is expected to save a weighted average of 2,928 kWh/controller. The expected energy savings per site will vary based on the type of establishment, ranging from 1,103 kWh to 13,242 kWh.

Anti-Sweat Heater (ASH) Controls

Uncontrolled frame and door heaters (designed to quickly dissipate condensation that accumulates when a refrigerated door is opened) operate at full power 24 hours per day. However, ambient temperature and relative humidity often yield a dew point below the frame and/or glass temperature, negating the need for added heat. Across California's climate zones there is significant opportunity to greatly reduce, and in some cases practically eliminate, this load. Anti-Sweat heater controls monitor refrigerated temperature, ambient temperature and relative humidity to supply the minimum required power to keep refrigerated case glass doors clear of fog and frames free from condensation. Door frame heaters add considerable heat load to the refrigerated case, so compressor savings are a significant portion of the total savings.

Savings for ASH controls are calculated based on Southern California Edison's most recent work paper⁴. Two typical projects are described below:

- Grocery store frozen aisle, 48 doors at 1.8 amp heater circuit per door (heat supplied to frame and glass). With 65% reduction in run time, total kWh savings will be 47,391. The EUL for this measure is 12 years.
- Convenience store cooler, 12 doors at .5 amp heater circuit per door (heat supplied to frame only). With 85% reduction in run time total, kWh savings will be 10,750. Again the EUL is 12.

This best practice measure is expected to save 987 kWh/case.lin.ft and reduces peak demand by 0.0081/case.lin.ft. The expected savings and peak demand reduction per site will vary based on the type of establishment, ranging from 9,873 kWh and 0.2025 kW to 23,696 kWh and 0.486 kW.

LED Refrigerated Case Lighting and Occupancy Sensors

Latest developments in LED lighting technology offer multiple energy benefits. Compared to a typical T8 base case, LEDs offer total system savings of:

- 61% Wattage Reduction
Unlike fluorescent lighting, which suffers dramatic loss of light output at refrigerated case temperatures, LEDs produce more light with less energy at lower temperatures.
- 24% Reduced Heat Load
Fewer watts mean less energy converted to heat which means less work for the compressor. Furthermore, LEDs do not emit infrared light, which converts to heat when it strikes a surface. Fluorescents emit nearly 40% of their output as non-visible infrared; therefore they radiate much more heat than LEDs. LED heat is primarily conducted out the door frame rather than distributed into the refrigerated case.

⁴ WPSCNRRN0009.0 - Anti-Sweat Heat (ASH) Controls .doc

- 12% Occupancy Sensor Dimming

By dimming LEDs to 20% output when no shoppers or employees are present, total system savings are increased by an additional 12%.

Taken together these three benefits result in 97% system savings from lighting.

Non-energy benefits include:

Reduced Maintenance Expenses

With a 50,000 hour useful life LEDs last much longer than T8s. Fewer outages mean fewer lost sales when lamps do fail. When asked, many shoppers indicated a severe reluctance to purchase a product from an unlit refrigerated case⁵. A possible explanation is their experience at home when a refrigerator lighting failure occurs (this usually indicates total loss of refrigeration and spoilage). While this is not usually the case in a commercial setting, the fear carries over.

LEDs Do Not Contain Mercury

Mercury is highly toxic and fluorescent lamps must be disposed of properly.

LEDs Produce More Even Light and Less Glare

Because LEDs are directional, distribution of light across a display door is more uniform and less light spills into aisles which creates glare that can obscure rather than illuminate product.

Actual energy savings will be calculated on a per site basis by recording the specifications of the base case luminaries and taking the difference from the retrofit models, including occupancy sensor and compressor savings, consistent with the DOE findings.

Based on two recent reports from DOE and SMUD⁶, this best practice measure saves 467 kWh/door and reduces peak demand by 0.0384/door. The expected energy savings and peak demand reduction per site will vary based on the type of establishment, ranging from 4,666 kWh and 0.384 kW to 37,329 kWh and 3.072 kW.

Infiltration Barriers (gaskets, strip curtains and door closers)

These “basic” infiltration barriers are crucial to system efficiency. Replacing motors and installing controls while leaving gaps around and under doors greatly undermines the benefits of the upgrades.

Door gaskets: Bad gaskets overwork refrigerator and freezer compressors by allowing warm air to leak into the refrigerated space. Poorly working hardware such as latches and hinges can prevent even a perfect gasket from sealing, so this is also checked and repairs are specified if necessary to create a tight seal. Door gaskets can be replaced on both glass and solid reach-in and walk-in insulated doors. These are regular maintenance items that are often postponed or ignored by customers. Replacement gaskets used in the KYC program are manufactured to OEM specifications for material, magnetism, attachment method (e.g. press-in, screw-in, adhesive) and compression.

⁵ LED_Freezer_Case_Lighting; (Final).pdf, SMUD, pg. 12

⁶ Eugene Freezer Case G-Way Rpt 18873 final.doc, LED_Freezer_Case_Lighting_(Final).pdf

This best practice measure is expected to save 44 kWh/ lin.ft⁷ and reduce peak demand by 0.01019/lin.ft. The expected energy savings and peak demand reduction per site will vary based on the type of establishment, ranging from 2,156 kWh and 0.50 kW to 24,112 kWh and 5.58 kW.

The primary non-energy benefit of replacing gaskets is improved sanitation. Tears and cracks in gaskets harbor debris that facilitates mold and bacterial growth.

Strip curtains: Each time a walk-in door is opened warm refrigerated space is exposed to warm, and often moist, air. Often, during stocking activities or due to inattentive staff, doors are left open for long periods of time. Strip curtains reduce the amount of outside air that enters the cooler/freezer. Strip curtains can be installed on any size door including large warehouse openings up to 20 feet high. New strip curtains have a EUL of 4 years. Savings are calculated per square foot installed. Calculations may vary by type of door (standard walk-in doors vs. warehouse doors with forklift traffic), type of establishment, climate zone and equipment temperature.

At the request of Silicon Valley Energy Watch, Humitech recently sourced a non-phthalate compound for strip curtains. While this has no energy benefit, it may reduce hazards caused by exposure to phthalate containing compounds. *Keep Your Cool* will utilize non-phthalate plastics in its strip curtains.

This best practice measure is expected to save 167 kWh/sq.ft.⁸ and reduce peak demand by 0.282/sq.ft. The expected energy savings and peak demand reduction per site will vary based on the type of establishment, ranging from 2,156 kWh and 0.50 kW to 24,112 kWh and 5.58 kW.

Auto-closers: Customers and staff regularly leave doors open or ajar on walk-in and reach-in coolers/freezers, forcing the compressor to compensate. Auto-closers for walk-in doors work best when used together with cam-lift, spring-assist hinges. Walk-in door closers, or “snuggers,” close the door when it is within one inch of closing. Closers for reach-in display doors close the door without assistance after the door has been open wide enough to add or remove product from the cooler/freezer.

- Reach-in coolers: Using an average of 405 kWh/linear per reach-in cooler closer, an installed cost of \$125/closer and 8 year EUL, the levelized cost of one unit is \$0.056/kWh with an incentive of \$0.309.
- Reach-in freezers: Using an average of 1210 kWh/linear per reach-in freezer closer, an installed cost of \$125/closer and 8 year EUL, the levelized cost of one unit is \$0.019/kWh with an incentive of \$0.103.
- Walk-in coolers: Using an average of 979 kWh/linear per walk-in cooler closer, an installed cost of \$150/closer and 8 year EUL, the levelized cost of one unit is \$0.028/kWh with an incentive of \$0.153.
- Walk-in freezer: Using an average of 2415 kWh/linear per walk-in freezer closer, an installed cost of \$150/closer and 8 year EUL, the levelized cost of one unit is \$0.011/kWh with an incentive of \$0.062.

⁷ refrigerated gaskets_POU workbook_v3.xlsx

⁸ Strip Curtains PGECOREF103 R1 execsum.xls

This best practice measure is expected to save a weighted average of 801 kWh/closer⁹ and reduce peak demand by 0.1341/closer. The expected energy savings and peak demand reduction per site will vary based on the type of establishment, ranging from 801 kWh and 0.1341 kW to 2,404 kWh and 0.40 kW.

Low Wattage T8 Fluorescent Lamps

Low wattage T8s fall outside the scope of walk-in refrigeration best practices as they are not suited to cold environments. However standard F32 3500k T8s with instant start ballasts are prevalent in commercial kitchens. This is an ideal situation for a 1:1 replacement to a 25 watt 5000k T8. A single kitchen can have as many as 100 of these lamps. The replacement yields not only energy savings, but improved color rendering and greater perceived light output (measured as photopic/scotopic ratio) resulting in a safer work environment with less eye strain.

Lighting retrofits on this small scale are not typically attractive to lighting companies and often overlooked, but provided as a “foot in the door” offer to prospective program participants, they can be used as a very simple, extremely cost effective tool encouraging further program participation. Removed lamps will be processed via EPA regulations ensuring mercury does not go to a landfill.

Based on savings calculations from PG&E’s tech brief¹⁰, this best practice measure saves 46 kWh/lamp and reduces peak demand by 0.007/lamp. The expected energy savings and peak demand reduction per site will vary based on the type of establishment, ranging from 184 kWh and 0.03 kW to 4,599 kWh and 29 kW.

Vending and Merchandising Cooler Controllers¹¹

The Reach-In Cooler Vending Controller (Cooler Miser) and Vending Machine Controller (Vendor Miser) are energy control devices for refrigerated merchandise coolers with glass fronts and coin-operated vending machines. These coolers operate 24/7/365 (8,760 hrs/yr) irrespective of the sites’ operating hours, and contain fluorescent display lamps that operate continuously and refrigeration equipment that cycles continuously. The Controller curtails power to the cooler when customers are not present, reducing energy needed to power display lighting and refrigeration. Additional interactive savings are realized by eliminating the heat sources (evaporator fan and display lighting) within the cooler’s cold box cabinet, thereby reducing the refrigeration load.

In practice, merchandise coolers and vending machines only need to be operated 1) when a customer is present or 2) when the compressor must run to maintain the product at the desired temperature. The Controller must maintain the product at the correct temperature and safely operate the compressor. This is accomplished using three technologies:

- Passive infrared sensor to detect occupancy and turn off the display lights and compressor when no one is around
- Compressor detection to monitor a cooler’s refrigeration system operation and prevent short cycling of its compressor
- Room temperature sampling while in energy savings mode (re-powers cooler at ~2 hour intervals or as needed to maintain product temperature)

⁹ PGECOREF113 R1 Auto Closers for Reach in Cooler or Freezer Doors.doc; Refrigeration WP_2006_113005.xls

¹⁰ fs_lwt8techbriefrd.pdf

¹¹ EA RL 09-11 WP 090807 - R143 - VMReach-in_GT_v2 OPP 081709.doc, pg. 5

Logic in the Controller shuts off the cooler if no one is present for 15 minutes. Compressor protection is another requirement; compressor motor current must be sensed by the Controller indicating compressor operating status to prevent power curtailment until the compressor has completed its cooling cycle. The Controller and its sensor can be mounted on an adjacent wall or directly onto the merchandise cooler itself.

II. Targeted Industries and Market Potential

There are eleven (11) types of non-residential buildings that typically have a significant commercial refrigeration load. The following chart shows the distribution of building types in the proposed utility service areas:

Primary SIC	% of Total
Restaurants	53.39%
Bars	4.39%
Liquor retail	4.37%
Florsists	3.02%
Hotels	5.52%
Healthcare	4.29%
Education	12%
Small Grocery	8.12%
Medium Grocery	3.21%
Large Grocery	0.77%
Supermarket	0.87%
Total	100%

Each of the building types conforms to a standard measure profile with regards to the number and type of refrigeration components. For example, in a typical small grocery (< 2,500 square feet building size) KYC would expect to find 10-12 glass doors, a walk-in door, 2-3 evaporators with 8-9 fan motors, a reach-in cooler, and about 30 T8 lamps running 18 hours per day. Based on this equipment, a small grocery store would contain the following measure profile:

Site Type	Measure	Unit Type	Units/Site
Small Grocery	Gasket	Lin.Ft.	145
Small Grocery	Walk-in Door Strip Curtain	Squ.Ft.	21
Small Grocery	Auto Door Closer	Closer	2
Small Grocery	EC Motor Controller	Controller	1
Small Grocery	Anti-Sweat Heater Controls	Case.Lin.Ft.	25
Small Grocery	LED Case Lighting	Door	10
Small Grocery	EC Motor	Motor	8
Small Grocery	Low Wattage T8 Bulbs	Lamp	30

Not all equipment is a candidate for retrofit. Therefore, the potential is then adjusted based on the number of buildings that are likely to have a retrofit opportunity for a given measure. For example, 30% of small groceries will have the need for an Auto Door Closer; however, almost all will need LED Case Lighting retrofits.

Finally, the combination of measures, type of establishments and total number of prospects per utility region are multiplied by the goal penetration rate (% of sites served) as determined by the level of utility funding contribution.

Site Type	Measure	Site Pen. Rate	% of Sites Retrofit	# Retrofits	Unit Type	Units/ Retrofit	Total Units	Total kWh	Total kW
Small Grocery	Gasket	15%	50%	2	Lin.Ft.	145	301	13,249	3
Small Grocery	Strip Curtain	15%	80%	3	Squ.Ft.	21	70	11,653	20
Small Grocery	Door Closer	15%	30%	1	Closer	2	2	1,997	0
Small Grocery	EC Motor Controller	20%	68%	4	Controller	1	4	16,500	-
Small Grocery	ASH Controls	10%	50%	1	Case.Lin.Ft.	25	35	13,669	0
Small Grocery	LED Case Lighting	23%	100%	6	Door	10	63	29,458	2
Small Grocery	EC Motor	26%	90%	6	Motor	8	52	56,874	4
Small Grocery	Low Wattage T8 Bulbs	5%	75%	1	Lamp	30	31	1,433	0
Total								144,832	30

In this example, KYC identified 28 small grocery buildings served by a particular utility. We expect 90% of those buildings to be eligible for Programmable ECMs. The utility wants to achieve 26% penetration of their KYC market potential for this measure. This equates to the retrofit of about 6.5 sites. With 8 motors at each site, the total projection of motor installations in this community is 52. Based on the documented savings and peak demand reduction per unit, Programmable EC Motor retrofits will save small grocers customers 56,874 kWh annually and reduce peak demand 4 kW.

This process is repeated to apply the same methodology for all measures, building types, and service territories and derive the total expected energy savings and peak demand reduction for each participating utility.

III. Participant Recruitment

Effective recruitment of program participants begins with the coordination of effort between the program administrators and the participating utility. Utilities will send a letter to non-residential accounts that include a commercial refrigeration load. Some utilities may also elect to make personal contact with some accounts.

Following the initial utility contact, *Keep Your Cool* initiates a postcard campaign to market the program. Postcards have proven to be very effective at generating interest. *Keep Your Cool* pays for first class postage so that returns from the initial mailing also provide change of address data which is used to further refine the mailing list. Subsequent mailings also increase the urgency of the message, up to a "Last Chance" card which is mailed during the last few months of the campaign (if funds remain unallocated). Postcards may be mailed up to six times throughout the two year campaign.

In addition to encouraging the customer to call the program's toll-free number (or their utility) the postcard advertises the KeepYourCool.org website, where they can get information on all aspects of the program.

Leads are followed up by site visits from program field representatives (Auditors). Auditors are fully trained in all aspects of the program, from identifying and clearly explaining energy saving opportunities through contract and financing details. KYC auditors present the program in a

professional manner on behalf of the local utility. If a utility chooses, their representative may accompany the KYC Auditor to further program credibility.

In addition to following up on the direct mail efforts, KYC Auditors systematically cold call all of the prospects in an area. When a decision maker is not available during the cold call, KYC auditors may leave behind a program folder which includes a one page overview of the program and specification sheets for the different technologies that may be suitable for their location.

Making sure that every customer has multiple interactions with the program is the key to avoiding lost opportunities. In previous experience, it can take some time for skeptical customers decide to participate. In these cases Auditors may make numerous callbacks in an effort to develop a relationship with the customer. Consequently, *Keep Your Cool* is able to reap dividends from the relationships created during previous, successful projects. These relationships will be built upon to encourage further adoption of the best practice measures.

IV. Program Implementation

During KYC site visits, the auditor will check existing refrigeration equipment for retrofit opportunities. Each piece of equipment is labeled with a unique serial number. Any work done to that equipment will include a reference to that serial number. Digital photographs will be taken to record the specifications and/or the condition of the equipment, and whether or not it is to be retrofit.

The auditor will record their findings and prepare an audit report for the customer. The audit report will detail all recommended energy efficient measures, the energy and monetary savings calculations, what incentives are available and what co-pays, if any, would be required. The Auditor will also collect all information required for incremental and final reporting requirements as specified by the CEC. The auditor will then provide a hard copy to the customer and a soft copy will be available.

The auditor will submit the audit report and documentation to KYC administration.

Auditors will follow up with customers who require extra time, have additional questions or must meet requirements specific to their business (e.g. Corporate approval) at weekly intervals until the customer accepts or declines participation. Auditors will keep customers up to date on changes in the program (e.g. program about to be fully subscribed) so they do not miss their opportunity to participate.

V. Program Delivery

Once customers become program participants, Auditors will be involved in coordinating installation times, responding to pre- and/or post-installation issues and verifying that they are satisfied with the final results.

Measures will, on average, be installed within two weeks. Occasionally, uncommon gaskets can have longer than average manufacturing/procurement timelines and may delay completion of measure installation. Previous experience has shown that program participants from the food service industry have strict requirements for when service providers can work in their facilities. The KYC program is careful to work around these requirements.

Once the measure installation is complete, the Participant will sign the Project Completion Form.

Measures installed under the KYC program have at least a 1 year warranty on parts and installation.

VI. Customer Interface

Potential program participants will work with either the KYC Auditor directly or the KYC Program Manager. Once they have expressed an interest in participating in the program their eligibility must be

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determined. Ideally, each participating utility will be able to provide a list of business customers who are potential participants in this program. This will allow for quick and accurate determination of a participant's eligibility. Once eligibility has been verified, a KYC Auditor will perform an inspection and generate a proposal.

In the event a participating utility is unable to provide a list of business customers, the Auditor or Program Manager will ask the potential participant for their utility account number. Assuming all business account holders are eligible to participate in the program, existence of an account number (from a current bill) would be considered proof of eligibility. If no current bill is available, the Auditor or Program Manager will contact the utility on the customer's behalf to determine eligibility.

VII. Quality Assurance

A successful retrofit begins with an accurate audit. KYC auditors have experience inspecting thousands of locations, but ongoing training is mandatory. In 2009 all auditors completed the most recent curriculum which now consists of classroom based training conducted over 8 weeks. Auditor training includes principals of refrigeration and foundations of all available measures and technologies, including working demonstrations. The course culminates in written and verbal exams to test comprehension and identify areas for review.

A new addition for KYC will be inclusion of digital photographs in each audit file. The goal is to maintain a complete archive of pre-existing conditions and equipment. Not only will this enhance overall reporting accuracy, but will help complete each retrofit as efficiently as possible (i.e. one trip instead of two).

Step two towards successful implementation is timely and accurate processing of the field data. Auditors submit audit reports, signed Program Agreements, and photographs, via an online portal to Humitech's scheduling system. Once submitted, bookkeeping creates an estimate of the job cost and applies that to the program budget. Meanwhile, the Operations Manager reviews the audit. Once all, if any, clarifications have been resolved with the auditor and/or customer, the project is approved for production. At this time materials are manufactured or otherwise procured for the project. A tentative install date is set and the customer is contacted to confirm the appointment. Once all approvals are in place the technician is scheduled.

Like auditors, technicians undergo a thorough training process but with a greater emphasis on fieldwork over classroom training. Technicians are always accompanied by a senior qualified and experienced technician. Only after all senior team members agree that a new technician is qualified to work independently will a trainee technician be permitted to work without supervision. Technicians are trained to adhere to manufacturer's installation specifications and, when applicable, *Small Commercial Mass Market Installation Standards* 11.

Once a project is completed, the person-in-charge at the site is required to inspect and sign-off on the work completed. Once the customer is satisfied, as indicated by signing the Project Completion Form, the project is submitted for post-installation verification.

VIII. Measure Verification

Expected kWh savings and kW peak reduction provided in this proposal are based on studies by POUs, IOUs and The Department of Energy. Each of the values is in use by at least one other program and most come from a utility or government agency.

Appendix B

Fees and Costs; not to exceed \$50,000

Measure (units)	Measure Cost/Unit	Total kWh Potential	Total kW Potential	Target Penetration Rate	100% DI Incentive Cost/kwh	Projected kWh Savings	Total Incentive Budget
Gaskets (Inr. Ft.)	\$8.00	637,758	148	5.0%	\$0.182	31,939	\$5,812.89
Strip Curtains (sq. ft.)	\$9.87	534,116	902	10.0%	\$0.059	53,412	\$3,156.75
Door Closers (ea.)	\$150.00	61,620	10	5.0%	\$0.187	3,081	\$576.75
EC Motors (ea.)	\$223.23	1,139,363	105	9.0%	\$0.203	102,185	\$20,743.52
ECM Fan Controls (ea.)	\$625.00	427,660	0	15.0%	\$0.213	64,167	\$13,667.58
ASH Controls (ea.)	\$58.00	396,312	8	10.0%	\$0.147	39,703	\$5,836.35
Total Incentive Costs							\$49,793.83



CERTIFICATE OF LIABILITY INSURANCE

OP ID PN

DATE (MM/DD/YYYY)

07/26/10

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER CAL Insurance & Associates Inc License #0241094 2311 Taraval Street San Francisco CA 94116-2253 Phone: 415-661-6500 Fax: 415-661-2254		CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL: ADDRESS: PRODUCER CUSTOMER ID #: HUMIT-1																						
INSURED Humitech of Northern Calif DBA: Bay Area Gasket Guy 253 Polaris Ave Mountain View CA 94042		<table border="1"><thead><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A:</td><td>Golden Eagle Insurance Corp.</td><td>10836</td></tr><tr><td>INSURER B:</td><td>Topa Insurance Company</td><td>18031</td></tr><tr><td>INSURER C:</td><td>Preferred Employers Ins Co Inc</td><td>10900</td></tr><tr><td>INSURER D:</td><td></td><td></td></tr><tr><td>INSURER E:</td><td></td><td></td></tr><tr><td>INSURER F:</td><td></td><td></td></tr></tbody></table>		INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Golden Eagle Insurance Corp.	10836	INSURER B:	Topa Insurance Company	18031	INSURER C:	Preferred Employers Ins Co Inc	10900	INSURER D:			INSURER E:			INSURER F:		
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INSURER E:																								
INSURER F:																								

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			CBP8577613	12/10/09	12/10/10	EACH OCCURRENCE	\$ 1000000
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1000000
	CLAIMS-MADE	<input type="checkbox"/>	OCCUR				MED EXP (Any one person)	\$ 5000
							PERSONAL & ADV INJURY	\$ 1000000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$ 2000000
	<input checked="" type="checkbox"/> POLICY	<input type="checkbox"/> PRO-JECT	<input type="checkbox"/> LOC				PRODUCTS - COMP/OP AGG	\$ 2000000
								\$
A	AUTOMOBILE LIABILITY			BA2325093	12/10/09	12/10/10	COMBINED SINGLE LIMIT (Ea accident)	\$ 1000000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$
	ALL OWNED AUTOS						BODILY INJURY (Per accident)	\$
	SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident)	\$
	HIRED AUTOS				\$			\$
	NON-OWNED AUTOS				\$			\$
B	UMBRELLA LIAB			XL27089	12/10/09	12/10/10	EACH OCCURRENCE	\$ 2000000
	EXCESS LIAB		OCCUR				AGGREGATE	\$ 2000000
			CLAIMS-MADE					\$
	DEDUCTIBLE							\$
	<input checked="" type="checkbox"/> RETENTION \$		10000					\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WKN138166-1	10/13/09	10/13/10	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS	OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y/N	N/A				E.L. EACH ACCIDENT	\$ 1000000
							E.L. DISEASE - EA EMPLOYEE	\$ 1000000
							E.L. DISEASE - POLICY LIMIT	\$ 1000000
	If yes, describe under DESCRIPTION OF OPERATIONS below							

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
CITY OF LODI, ITS ELECTED AND APPOINTED
BOARDS, COMMISSIONS, OFFICERS, AGENTS, EMPLOYEES, AND VOLUNTEERS NAMED
ADDITIONAL INSURED PER ATTACHED GECG602. PRIMARY WORDING APPLIES.

CERTIFICATE HOLDER

CANCELLATION

CITY OF LODI 221 WEST PINE ST P.O. BOX 3006 LODI CA 95241-1910	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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COMMERCIAL LIABILITY GOLD ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION I - COVERAGES

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

2. Exclusions

Item 2.g. 2) is replaced with the following:

2.g. 2) A watercraft you do not own that is:

- a) less than 50 feet long; and
- b) Not being used to carry persons or property for a charge.

Item 2.g. 6) is added:

- 6) An aircraft in which you have no ownership interest and that you have chartered with crew.

The last paragraph of 2. Exclusions is replaced with the following:

Exclusions c. through n. do not apply to damage by fire, explosion, sprinkler leakage, or lightning to premises while rented to you, temporarily occupied by you with the permission of the owner, or managed by you under a written agreement with the owner. A separate limit of insurance applies to this coverage as described in **Section III - Limits of Insurance.**

SECTION I - COVERAGES

COVERAGE C. MEDICAL PAYMENTS

If Medical Payments Coverage is provided under this policy, the following is changed:

3. Limits

The medical expense limit provided by this policy shall be the greater of:

- a. \$10,000; or
- b. The amount shown in the declarations.

Coverage C. Medical Payments is primary and not contributing with any other insurance, even if that other insurance is also primary.

The following is added:

COVERAGE D. PRODUCT RECALL NOTIFICATION EXPENSES

Insuring Agreement

We will pay "product recall notification expenses" incurred by you for the withdrawal of your products, provided that:

- a. Such withdrawal is required because of a determination by you during the policy period, that the use or consumption of your products could result in "bodily injury" or "property damage"; and
- b. The "product recall notification expenses" are incurred and reported to us during the policy period.

The most we will pay for "product recall notification expenses" during the policy period is \$100,000.

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

Item b. and d. are replaced with:

- b. The cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit" including actual loss of earnings up to \$500 a day because of time off from work.

SECTION II-WHO IS AN INSURED

Item 4. is replaced with:

4. Any subsidiaries, companies, corporations, firms, or organizations you acquire or form during the policy period over which you maintain a controlling interest of greater than 50% of the stock or assets, will qualify as a Named Insured if:
 - a) you have the responsibility of placing insurance for such entity; and
 - b) coverage for the entity is not otherwise more specifically provided; and
 - c) the entity is incorporated or organized under the laws of the United States of America.

However, coverage under this provision does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the entity, or "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the entity.

Coverage under this provision is afforded only until the end of the policy period, or the twelve (12) month anniversary of the policy inception date whichever is earlier.

SECTION III - LIMITS OF INSURANCE

Paragraph 2 is amended to include:

The General Aggregate Limit of Insurance applies separately to each "location" owned by you, rented to you, or occupied by you with the permission of the owner.

Paragraph 6. is replaced with the following:

6. Subject to 5. above, the Fire Damage Limit is the most we will pay under Coverage A for damages because of "property damage" to premises while rented to you, temporarily occupied by you with permission of the owner, or managed by you under a written agreement with the owner, arising out of any one fire, explosion or sprinkler leakage incident.

The Fire Damage Limit provided by this policy shall be the greater of:

- a. \$500,000. or
- b. The amount shown in the Declarations.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

Item 2. a. is replaced with:

2. Duties In The Event of Occurrence, Offense, Claim or Suit

- a. You must promptly notify us. Your duty to promptly notify us is effective when any of your executive officers, partners, members, or legal representatives is aware of the "occurrence", offense, claim, or "suit". Knowledge of an "occurrence", offense, claim or "suit" by other employee(s) does not imply you also have such knowledge. To the extent possible, notice to us should include:

- 1) How, when and where the "occurrence" or offense took place;
- 2) The names and addresses of any injured persons and witnesses; and
- 3) The nature and location of any injury or damage arising out of the "occurrence", offense, claim or "suit".

Item 4. b. 1) b) is replaced with:

b. Excess Insurance

- 1) b) That is Fire, Explosion or Sprinkler Leakage insurance for premises while rented to you, temporarily occupied by you with permission of the owner, or managed by you under a written agreement with the owner; or

Item 6. is amended to include:

6. Representations

- d. If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Part because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

Item 8. is replaced with:

8. Transfer of Rights Of Recovery Against Others To Us

- a. If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring suit or transfer those rights to us and help us enforce them.

- b. If required by a written "insured contract", we waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under that written "insured contract" for that person or organization and included in the "products-completed operations hazard".

Item 10. and Item 11. are added:

10. Cancellation Condition

If we cancel this policy for any reason other than nonpayment of premium we will mail or deliver written notice of cancellation to the first Named Insured at least 60 days prior to the effective date of cancellation.

11. Liberalization

If we adopt a change in our forms or rules which would broaden your coverage without an extra charge, the broader coverage will apply to this policy. This extension is effective upon the approval of such broader coverage in your state.

SECTION V- DEFINITIONS

The following definitions are added or changed:

9. "Insured contract"

a. Is changed to:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, explosion or sprinkler leakage to premises while rented to you, or temporarily occupied by you with permission of the owner, or managed by you under a written agreement with the owner is not an "insured contract".

23 and 24 are added:

23. "Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.
24. "Product recall notification expenses" means the reasonable additional expenses (including, but not limited to, cost of correspondence, newspaper and magazine advertising, radio or television announcements and transportation cost), necessarily incurred in arranging for the return of products, but excluding costs of the replacement products and the cash value of the damaged products.

The following Provisions are also added to this Coverage Part:

A. ADDITIONAL INSURED - BY CONTRACT, AGREEMENT OR PERMIT

1. Paragraph 2. under **SECTION II - WHO IS AN INSURED** is amended to include as an insured any person or organization when you and such person or organization have agreed in writing in a contract, agreement or permit that such person or organization be added as an additional insured on your policy to provide insurance such as is afforded under this Coverage Part. Such person or organization is not entitled to any notices that we are required to send to the Named Insured and is an additional insured only with respect to liability arising out of:
- a. Your ongoing operations performed for that person or organization; or
- b. Premises or facilities owned or used by you.

With respect to provision 1.a. above, a person's or organization's status as an insured under this endorsement ends when your operations for that person or organization are completed.

With respect to provision 1.b. above, a person's or organization's status as an insured under this endorsement ends when their contract or agreement with you for such premises or facilities ends.

2. This endorsement provision A. does not apply:
 - a. Unless the written contract or agreement has been executed, or permit has been issued, prior to the "bodily injury", "property damage" or "personal and advertising injury";
 - b. To "bodily injury" or "property damage" occurring after:
 - (1) All work, including materials, parts or equipment furnished in connection with such work, in the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
 - (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project;
 - c. To the rendering of or failure to render any professional services including, but not limited to, any professional architectural, engineering or surveying services such as:
 - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
 - (2) Supervisory, inspection, architectural or engineering activities;
 - d. To "bodily injury", "property damage" or "personal and advertising injury" arising out of any act, error or omission that results from the additional insured's sole negligence or wrongdoing;
 - e. To any person or organization included as an insured under provision B. of this endorsement;
 - f. To any person or organization included as an insured by a separate additional insured endorsement issued by us and made a part of this policy.

B. ADDITIONAL INSURED – VENDORS

Paragraph 2. under **SECTION II - WHO IS AN INSURED** is amended to include as an insured any person or organization (referred to below as "vendor") with whom you agreed, in a written contract or agreement to provide insurance such as is afforded under this policy, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

1. The insurance afforded the vendor does not apply to:
 - a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - b. Any express warranty unauthorized by you;
 - c. Any physical or chemical change in the product made intentionally by the vendor;

- d. Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the course of business, in connection with the distribution or sale of the products;
 - f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
 - g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
 - h. To "bodily injury" or "property damage" arising out of any act, error or omission that results from the additional insured's sole negligence or wrongdoing.
2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

AGREEMENT FOR PROFESSIONAL SERVICES

ARTICLE 1 PARTIES AND PURPOSE

Section 1.1 Parties

THIS AGREEMENT is entered into on August 6th, 2010, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and SBW Consulting, Inc. (hereinafter "CONSULTANT").

Section 1.2 Purpose

CITY selected the CONSULTANT to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONSULTANT for the Lodi VendingMiser Installation Program (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONSULTANT acknowledges that it is qualified to provide such services to CITY.

ARTICLE 2 SCOPE OF SERVICES

Section 2.1 Scope of Services

CONSULTANT, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A.

Section 2.2 Time For Commencement and Completion of Work

CONSULTANT shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONSULTANT shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONSULTANT shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be counted against CONSULTANT's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONSULTANT shall remain

in contact with reviewing agencies and make all efforts to review and return all comments.

Section 2.3 Meetings

CONSULTANT shall attend meetings as may be set forth in the Scope of Services.

Section 2.4 Staffing

CONSULTANT acknowledges that CITY has relied on CONSULTANT's capabilities and on the qualifications of CONSULTANT's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONSULTANT, or the CONSULTANT's subcontractor. CITY shall be notified by CONSULTANT of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONSULTANT of any changes of CONSULTANT's project staff prior to any change.

CONSULTANT represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein. CONSULTANT represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONSULTANT to practice its profession, and that CONSULTANT shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

**ARTICLE 3
COMPENSATION**

Section 3.1 Compensation

CONSULTANT's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Exhibit B and incorporated by this reference.

CONSULTANT shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

Section 3.2 Method of Payment

CONSULTANT shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONSULTANT's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

Section 3.3 Costs

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY.

Section 3.4 Auditing

CITY reserves the right to periodically audit all charges made by CONSULTANT to CITY for services under this Agreement. Upon request, CONSULTANT agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONSULTANT agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONSULTANT agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONSULTANT further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

ARTICLE 4 MISCELLANEOUS PROVISIONS

Section 4.1 Nondiscrimination

In performing services under this Agreement, CONSULTANT shall not discriminate in the employment of its employees or in the engagement of any sub consultant on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

Section 4.2 ADA Compliance

In performing services under this Agreement, CONSULTANT shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

Section 4.3 Indemnification and Responsibility for Damage

CONSULTANT to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONSULTANT, any subcontractor employed directly by CONSULTANT, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

Section 4.4 No Personal Liability

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

Section 4.5 Responsibility of CITY

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

Section 4.6 Insurance Requirements for CONSULTANT

CONSULTANT shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

Section 4.7 Successors and Assigns

CITY and CONSULTANT each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONSULTANT shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY

Section 4.8 Notices

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY: City of Lodi
 221 West Pine Street
 P.O. Box 3006
 Lodi, CA 95241-1910

To CONSULTANT: SBW Consulting, Inc.
 2820 Northup Way, Suite 230
 Bellevue, WA 98004

Section 4.09 Cooperation of CITY

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

Section 4.10 CONSULTANT is Not an Employee of CITY

CONSULTANT agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of CITY and not an employee of CITY. CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONSULTANT meet specific standards without regard to the manner and means of accomplishment thereof.

Section 4.11 Termination

CITY may terminate this Agreement, with or without cause, by giving CONSULTANT at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONSULTANT shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONSULTANT shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONSULTANT with third parties in reliance upon this Agreement.

Section 4.12 Confidentiality

CONSULTANT agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONSULTANT and clearly marked by CONSULTANT as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONSULTANT. CONSULTANT acknowledges that CITY is subject to the California Public Records Act.

Section 4.13 Applicable Law, Jurisdiction, Severability, and Attorney's Fees

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

Section 4.14 City Business License Requirement

SBW Consulting, Inc. acknowledges that Lodi Municipal Code Section 3.01.020 requires SBW Consulting, Inc. to have a city business license and SBW Consulting, Inc. agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

Section 4.15 Captions

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

Section 4.16 Integration and Modification

This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

Section 4.17 Contract Terms Prevail

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

Section 4.18 Ownership of Documents

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONSULTANT shall allow CITY to inspect all such documents during CONSULTANT's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONSULTANT to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONSULTANT harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

Section 4.19 Authority

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement as of the date first above written.

CITY OF LODI, a municipal corporation

ATTEST:

By _____
RANDI JOHL
CITY CLERK

By _____
KONRADT BARTLAM
INTERIM CITY MANAGER

APPROVED AS TO FORM:
D. STEPHEN SCHWABAUER, City Attorney

By _____
Janice D. Magdich
Deputy City Attorney 

By: 
Michael Baker
SBW Consulting, Inc.
Its: Vice-President

Attachments:

Exhibit A – Scope of Services

Exhibit B – Fee Proposal

Exhibit C – Insurance Requirements

Exhibit A – Scope of Services

SCOPE OF SERVICES

SBW agrees to administer the Lodi VendingMiser Installation Program (LVIP) which would be offered by the utility to customers with cold beverage vending machines for the City of Lodi, in strict conformity with the terms and conditions of this contract. SBW will provide all necessary implementation services to deliver the Lodi VendingMiser Installation Program under this agreement.

Implementation Services will be provided by SBW. These services will include:

- Contacting potential customers who may have cold beverage vending machines to determine their eligibility and interest in the program.
- Completing 111 VendingMiser installations with eligible customers (using SBW's best efforts to locate 111 eligible machines) during the period September 1st 2010 to October 31st, 2010.
- Completing 10% (at least 12) QC audits during the period September 1st 2010, to October 31st, 2010
- Provide database reporting and picture verification reporting to Lodi on a monthly basis during the period September 1st 2010, to November 30th, 2010

TERMS OF AGREEMENT

The term of this agreement shall be from the earliest possible implementation date after Lodi City Council approval, through December 31, 2010, or whenever funds are exhausted, whichever comes earlier.

ADVERTISING, MARKETING, AND PUBLIC RELATIONS

Lodi and SBW will share in the responsibility of any marketing and public relations associated with this project.

SBW will obtain market intelligence from City of Lodi Electric Utility (LEU) customer representatives. SBW will interview LEU staff and determine the best contact strategy for each of the most promising customers served by LEU. In particular for larger or more sensitive customers, SBW or LEU staff will make contact via the best means (e-mail, telephone, letter or in-person) to inform the customer that SBW has joined the team, is a trusted partner, and should be given a chance to describe the program and its benefits.

INSURANCE

For actions performed under this agreement, SBW agrees to maintain all necessary insurance requirements set forth by Lodi (as identified in the instructions/requirements for insurance coverage page).

CONTRACT PRICE AND TERMS

SBW will invoice Lodi \$225/unit for each installed VendingMiser. This unit price covers all equipment, program management, status reporting and installation services. Invoices will be payable within thirty (30) days of the invoice date. The total project budget cost will not exceed \$25,000.

COMPLIANCE WITH LICENSES

SBW Consulting, Inc. will obtain a City of Lodi business license and pay the appropriate fees. No additional anticipated licenses required to comply with this project.

INDEMNITY CLAUSE

SBW shall indemnify, defend, and hold harmless the City of Lodi, the City of Lodi Electric Utility, it's City Council, Directors, Officers, Agents, and employees against all claims,

loss, damage, expense, and liability arising out of, or in any way connected with the performance of this contract and excepting only such loss, damage, or liability as may be caused by the intentional acts or sole negligence of the City of Lodi, and the City of Lodi Electric Utility.

TERMINATION

This contract will be terminated if SBW is unable to obtain product (VendingMisers) from USA Technologies, Inc. (the manufacturer) for any reason.

Exhibit B – Fee Proposal

Item	Budget
Complete 111 VendingMiser installations (using SBW's best efforts to locate 111 eligible machines) at \$225/installed unit. This unit price covers all equipment, program management, status reporting and installation services.	24,975
Total	\$24,975

Exhibit C – Insurance Requirements

ACORD		CERTIFICATE OF LIABILITY INSURANCE		OP ID SR SRMCO-1	DATE(MM/DD/YYYY) 07/30/10
PRODUCER Sprague Israel Giles 1501 Fourth Avenue, Suite 2000 Seattle WA 98101-1637 Phone: 206-623-7035 Fax: 206-682-4993		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
INSURED SPM Consulting, Inc. 2830 Northrup Way Ste. 230 Bellevue WA 98004-1419		INSURERS AFFORDING COVERAGE INSURER A: American Casualty Company INSURER E: Continental Casualty Company INSURER C: INSURER D: INSURER E:		NAIC # 20443	
COVERAGES THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
INSURANCE LTD (INSUR)	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE(MM/DD/YYYY)	POLICY EXPIRATION DATE(MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO. <input type="checkbox"/> LOC	B1029719995	04/28/10	04/28/11	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/CPAGS \$2,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	B1029719995	04/28/10	04/28/11	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	EXCESS/ UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in WA) <input type="checkbox"/> If yes, describe under SPECIAL PROVISIONS below OTHER	B1029719995 STOP GAP	04/28/10	04/28/11	WORKERS COMPENSATION LIMITS <input checked="" type="checkbox"/> OTHER \$ EL. EACH ACCIDENT \$1,000,000 EL. DISEASE - EA EMPLOYEE \$1,000,000 EL. DISEASE - POLICY LIMIT \$2,000,000
DESCRIPTION OF OPERATIONS/ LOCATIONS/ VEHICLES/ EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents and Employees are additional insured with respects Liability arising out of operations by or on behalf of the named insured for General Liability & Insurance is Primary & Non-Contributory per form SB146968A attached.					
CERTIFICATE HOLDER City of Lodi 221 W. Pine Street P.O. Box 3006 Lodi CA 95241-3006			CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 		

ACORD 25 (2009/01)

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CERTIFICATE OF LIABILITY INSURANCE

OP ID. SR
SBNCO-1

DATE (MM/DD/YYYY)

07/30/10

PRODUCER Sprague Israel Giles 1501 Fourth Avenue, Suite 2000 Seattle WA 98101-1637 Phone: 206-623-7035 Fax: 206-682-4993		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED SBN Consulting, Inc. 2820 Northup Way Ste 230 Bellevue WA 98004-1419		INSURERS AFFORDING COVERAGE INSURER A: American Casualty Company INSURER B: Continental Casualty Company INSURER C: INSURER D: INSURER E:	NAIC # 20443

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR. CODE LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	B1029719995	04/28/10	04/28/11	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	B1029719995	04/28/10	04/28/11	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY - AGG \$
	EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/EMBER EXCLUDED? <input type="checkbox"/> (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below OTHER	B1029719995 STOP GAP	04/28/10	04/28/11	WC STATUTORY LIMITS <input checked="" type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents and Employees are additional insured with respects Liability arising out of operations by or on behalf of the named insured for General Liability & Insurance is Primary & Non-Contributory per form SB146968A attached.

CERTIFICATE HOLDER City of Lodi 221 W. Pine Street P.O. Box 3006 Lodi CA 95241-3006	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
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IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

IMPORTANT: THIS ENDORSEMENT CONTAINS DUTIES THAT APPLY TO THE ADDITIONAL INSURED IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT. SEE PARAGRAPH C., OF THIS ENDORSEMENT FOR THESE DUTIES.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**BLANKET ADDITIONAL INSURED ENDORSEMENT
WITH PRODUCTS-COMPLETED OPERATIONS COVERAGE
&
BLANKET WAIVER OF SUBROGATION
Architects, Engineers and Surveyors**

This endorsement modifies insurance provided under the following:

**BUSINESSOWNERS LIABILITY COVERAGE FORM
BUSINESSOWNERS COMMON POLICY CONDITIONS**

- A. WHO IS AN INSURED (Section C.)** of the Businessowners Liability Coverage Form is amended to include as an insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement; but the written contract or written agreement must be:
1. Currently in effect or becoming effective during the term of this policy; and
 2. Executed prior to the "bodily injury," "property damage," or "personal and advertising injury."
- B. The insurance provided to the additional insured is limited as follows:**
1. That person or organization is an additional insured solely for liability due to your negligence specifically resulting from "your work" for the additional insured which is the subject of the written contract or written agreement. No coverage applies to liability resulting from the sole negligence of the additional insured.
 2. The Limits of Insurance applicable to the additional insured are those specified in the written contract or written agreement or in the Declarations of this policy, whichever is less. These Limits of Insurance are inclusive of, and not in addition to, the Limits of Insurance shown in the Declarations.
 3. The coverage provided to the additional insured within this endorsement and section titled **LIABILITY AND MEDICAL EXPENSE DEFINITIONS - "Insured Contract" (Section F.9.)** within the Businessowners Liability Coverage Form, does not apply to "bodily injury" or "property damage" arising out of the "products-completed operations hazard" unless required by the written contract or written agreement.
 4. The insurance provided to the additional insured does not apply to "bodily injury," "property damage," "personal and advertising injury" arising out of an architect's, engineer's, or surveyor's rendering of or failure to render any professional services including:
 - a. The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications by any architect, engineer or surveyor performing services on a project of which you serve as construction manager; or
 - b. Inspection, supervision, quality control, engineering or architectural services done by you on a project of which you serve as construction manager.
 5. This insurance does not apply to "bodily injury," "property damage," or "personal and advertising injury" arising out of:
 - a. The construction or demolition work while you are acting as a construction or demolition contractor. This exclusion does not apply to work done for or by you at your premises.
- C. BUSINESSOWNERS GENERAL LIABILITY CONDITIONS - Duties In The Event of Occurrence, Offense, Claim or Suit (Section E.2.)** of the Businessowners Liability Coverage Form is amended to add the following:
- An additional insured under this endorsement will as soon as practicable:
1. Give written notice of an occurrence or an offense to us which may result in a claim or "suit" under this insurance;

2. Tender the defense and indemnity of any claim or "suit" to us for a loss we cover under this Coverage Part;
3. Tender the defense and indemnity of any claim or "suit" to any other insurer which also has insurance for a loss we cover under this Coverage Part; and
4. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.

We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a claim or "suit" from the additional insured.

D. OTHER INSURANCE (Section H. 2. & 3.) of the Businessowners Common Policy Conditions are deleted and replaced with the following:

2. This insurance is excess over any other insurance naming the additional insured as an insured whether primary, excess, contingent or on any other basis unless a written contract or written agreement specifically requires that this insurance be either primary or primary and noncontributing to the additional insured's own coverage. This insurance is excess over any other insurance to which the additional insured has been added as an additional insured by endorsement.
3. When this insurance is excess, we will have no duty under Coverages A or B to defend the additional insured against any "suit" if any other insurer has a duty to defend the additional insured

against that "suit" If no other insurer defends, we will undertake to do so, but we will be entitled to the additional insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (b) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

E. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (Section K.2.) of the Businessowners Common Policy Conditions is deleted and replaced with the following:

2. We waive any right of recovery we may have against any person or organization against whom you have agreed to waive such right of recovery in a written contract or agreement because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included within the "products-completed operations hazard."

**Washington State Department of
Labor and Industries**



**Employer Liability
Certificate**

Department of Labor and Industries

Employer Liability Certificate

Date: 07/01/2010

UBI #: 601 261 355

Legal Business Name: SBW CONSULTING INC

Account #: 584,869-00

'Doing Business As' Name: SBW CONSULTING INC

Estimated Workers Reported: Quarter 1 of Year 2010 "11 to 20 Workers"
(See Description Below)

Workers' Comp Premium Status: Account is current. Firm has voluntarily reported and paid their premiums.

Licensed Contractor? No

Account Representative: T2 / ANNA COLEMAN (360)902-5634 - Email:
NORN235@lni.wa.gov

What does "Estimated Workers Reported" mean?

Estimated workers reported represents the number of full time position requiring at least 480 hours of work per calendar quarter. A single 480 hour position may be filled by one person, or several part time workers.

Industrial Insurance Information

Employers report and pay premiums each quarter based on hours of employee work already performed, and are liable for premiums found later to be due. Industrial insurance accounts have no policy periods, cancellation dates, limitations of coverage or waiver of subrogation (See RCW 51.12.050 and 51.16.190).

AGREEMENT FOR PROFESSIONAL SERVICES

ARTICLE 1 PARTIES AND PURPOSE

Section 1.1 Parties

THIS AGREEMENT is entered into on August 18 2010, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and Apogee Interactive, Inc. (hereinafter "CONSULTANT").

Section 1.2 Purpose

CITY selected the CONSULTANT to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONSULTANT for Online applications of HomeEnergySuite, CommercialEnergySuite and BillingInsights. (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONSULTANT acknowledges that it is qualified to provide such services to CITY.

ARTICLE 2 SCOPE OF SERVICES

Section 2.1 Scope of Services


CONSULTANT, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A.

Section 2.2 Time For Commencement and Completion of Work

CONSULTANT shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONSULTANT shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONSULTANT shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be counted against CONSULTANT's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONSULTANT shall remain



in contact with reviewing agencies and make all efforts to review and return all comments.

Section 2.3 Meetings

CONSULTANT shall attend meetings as may be set forth in the Scope of Services.

Section 2.4 Staffing

CONSULTANT acknowledges that CITY has relied on CONSULTANT's capabilities and on the qualifications of CONSULTANT's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONSULTANT, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONSULTANT of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONSULTANT of any changes of CONSULTANT's project staff prior to any change.

CONSULTANT represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein. CONSULTANT represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONSULTANT to practice its profession, and that CONSULTANT shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

Section 2.5 Subcontracts

Unless prior written approval of CITY is obtained, CONSULTANT shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

**ARTICLE 3
COMPENSATION**

Section 3.1 Compensation

CONSULTANT's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Exhibit B and incorporated by this reference.



CONSULTANT shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

Section 3.2 Method of Payment

CONSULTANT shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONSULTANT's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

Section 3.3 Costs

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY.

Section 3.4 Auditing

CITY reserves the right to periodically audit all charges made by CONSULTANT to CITY for services under this Agreement. Upon request, CONSULTANT agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONSULTANT agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONSULTANT agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONSULTANT further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

**ARTICLE 4
MISCELLANEOUS PROVISIONS**

Section 4.1 Nondiscrimination

In performing services under this Agreement, CONSULTANT shall not discriminate in the employment of its employees or in the engagement of any sub

consultant on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

Section 4.2 ADA Compliance

In performing services under this Agreement, CONSULTANT shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

Section 4.3 Indemnification and Responsibility for Damage

CONSULTANT to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONSULTANT, any subcontractor employed directly by CONSULTANT, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

Section 4.4 No Personal Liability

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

Section 4.5 Responsibility of CITY

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

Section 4.6 Insurance Requirements for CONSULTANT

CONSULTANT shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

Section 4.7 Successors and Assigns

CITY and CONSULTANT each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONSULTANT shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY



Section 4.8 Notices

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY: City of Lodi
221 West Pine Street
P.O. Box 3006
Lodi, CA 95241-1910

To CONSULTANT: James Malcom
Apogee Interactive, Inc.
100 Crescent Center Pkwy, Ste 450
Tucker, GA 30084

Section 4.09 Cooperation of CITY


CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

Section 4.10 CONSULTANT is Not an Employee of CITY

CONSULTANT agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of CITY and not an employee of CITY. CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONSULTANT meet specific standards without regard to the manner and means of accomplishment thereof.

Section 4.11 Termination

CITY may terminate this Agreement, with or without cause, by giving CONSULTANT at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONSULTANT shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONSULTANT shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONSULTANT with third parties in reliance upon this Agreement.



Section 4.12 Confidentiality

CONSULTANT agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONSULTANT and clearly marked by CONSULTANT as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONSULTANT. CONSULTANT acknowledges that CITY is subject to the California Public Records Act.

Section 4.13 Applicable Law, Jurisdiction, Severability, and Attorney's Fees

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

Section 4.14 City Business License Requirement

LaRue Communications acknowledges that Lodi Municipal Code Section 3.01.020 requires LaRue Communications to have a city business license and LaRue Communications agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

Section 4.15 Captions

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

Section 4.16 Integration and Modification

This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.



Section 4.17 Contract Terms Prevail

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

Section 4.18 Ownership of Documents

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONSULTANT shall allow CITY to inspect all such documents during CONSULTANT's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONSULTANT to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONSULTANT harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

Section 4.19 Authority

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement as of the date first above written.


CITY OF LODI, a municipal corporation

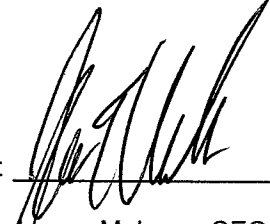
ATTEST:

By _____
RANDI JOHL
CITY CLERK

By _____
KONRADT BARTLAM
INTERIM CITY MANAGER

APPROVED AS TO FORM:
D. STEPHEN SCHWABAUER, City Attorney

By _____
Janice D. Magdich
Deputy City Attorney 

By: 


James Malcom, CFO/COO
Apogee Interactive, Inc.

Attachments:

Exhibit A – Scope of Services

Exhibit B – Fee Proposal

Exhibit C – Insurance Requirements

A handwritten signature or mark, possibly a stylized 'G' or 'S', located in the bottom right corner of the page.

APPENDIX A

Scope of Services

APOGEE agrees to administer the **HomeEnergySuite (HES)** and **CommercialEnergySuite (CES)** with the addition of **BillingInsights (BI)** for the City of Lodi, in strict conformity with the terms and conditions of this contract. APOGEE will provide all necessary implementation services to deliver the online applications, including all maintenance, under this agreement.

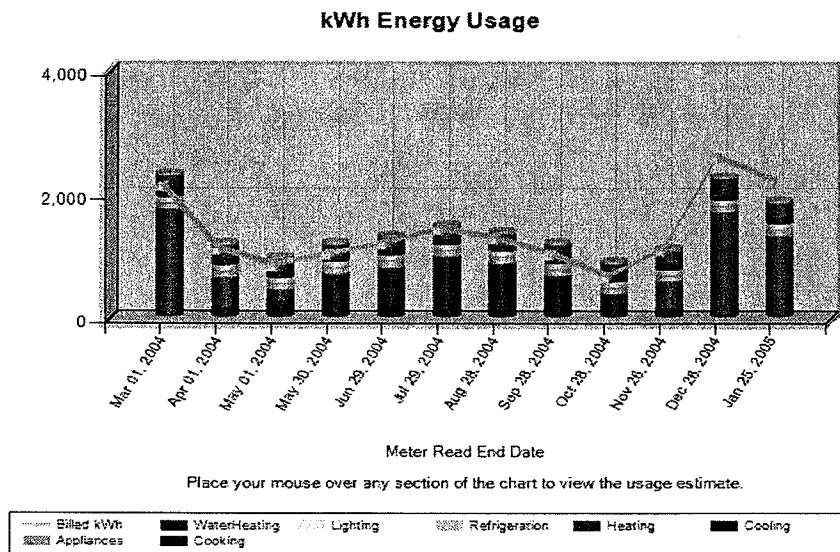
Implementation Services will be provided by APOGEE, continuing the services provided for the last two years. These services include:

- HomeEnergyCalculator online audit tool
- Kid's Korner educational content
- Residential Energy Systems reference library content
- Lighting and Appliance calculators
- InteractiveEnergyHome educational application
- CommercialEnergyCalculator online audit tool*
- Commercial Energy Systems reference library content*
- Understanding Demand online course*

New for 2010-2011 is the addition of BillingInsights, adding actual customer billing data to the analysis. It enables diagnostics of high bill questions, either self-serve by the customer, or facilitated by your call center. It requires a customer to log in to use this feature; ideally this can be accomplished with an existing account login if that is available.

By superimposing the actual usage information, customers and your customer service agents can easily diagnose high bill concerns. Many of these are easily explained as the weather dependence of energy use is revealed in the monthly breakdowns.

The patterns which emerge from analyzing the variance between predicted and actual energy use help explain anomalies in billing. The program supports intelligent scripting to prompt customers or customer service agents on likely causes for discrepancies in usage.



Because it is linked to the same analytical engine, customer service agents can proactively suggest solutions to high bill concerns, such as weatherstripping or changing temperature setpoints and immediately provide feedback on the savings for those measures.

BillingInsights is a simple upgrade to the HomeEnergySuite package, and requires minimal involvement by your IT department to provide the necessary data extracts.

APPENDIX B

Fee Proposal

There is no change for the fees for the existing subscription elements, Home Energy Suite and CommercialEnergySuite. That annual subscription totals \$16,300.

The BillingInsights option can be added for a one time setup fee of \$4,500 using our existing data exchange format with your billing system. The annual subscription for this addition would be \$5,500 for the residential customer base, and \$3,500 for the commercial customers.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a single continuous stroke.

TERMS AND CONDITIONS

1. General

The following terms and conditions ("Terms and Conditions") provide for terms that are common to this Agreement, including all Schedules. In the event of a conflict between these Terms and Conditions and any Schedule, the Schedule will control, unless expressly stated to the contrary in these Terms and Conditions.

2. Definitions

As used in this Agreement, and in addition to any other terms defined in this Agreement, the capitalized terms used herein will have the meanings set forth in the Glossary at the end of these Terms and Conditions.

3. Services

3.1 Network Services.

Licensor will provide Company and the Users with access to the applicable System residing on the Licensor Server ("Network Services") provided that Company and each User must provide its own equipment and services necessary to access the Internet.

3.2 Maintenance Services.

Licensor will provide maintenance services for Company as described on Schedule B ("Maintenance Services").

4. RIGHTS RESERVED

As between Licensor and Company, title, ownership rights, and Intellectual Property Rights in and to the BillingInsights™ Billing Question Resolution System (BI) and the related Marks (and all Derivative Works thereto and copies thereof, but excluding Company Materials) will remain with Licensor and its suppliers or licensors. Company agrees to abide by the patent and copyright laws and all other applicable laws of the United States including, but not limited to, export control laws. Company acknowledges that the System and all related Source Code remains Proprietary Information of Licensor and/or its suppliers, that the Source Code is not licensed to Company by this Agreement or any Schedule, and Licensor will not deliver a copy of the Source Code or any applications comprising the System to Company. Except as set forth in the Schedules, no right or implied license or right of any kind is granted to Company regarding the System or Deliverables, including, but not limited to, any right to use, reproduce, market, sell, translate, distribute, transfer, adopt, disassemble, decompile, reverse engineer the System or the Documentation thereof, or any portions thereof, or obtain possession of any Source Code or other technical material relating to the System. Company further agrees not to lease, license, sell, sublicense or otherwise transfer the System or Network Services except as expressly authorized by this Agreement. In addition, Company agrees not to modify the System, create Derivative Works or attempt to decipher, decompile, disassemble or reverse engineer the System. The System and Services provided hereunder are "commercial items" as that term is defined at 48 CFR 2.101 consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 CFR 12.212 and other applicable acquisition regulations and are provided to Company (and the Users, including the U.S. Government, if applicable) only as a commercial item. Consistent with 48 CFR 12.212, 48 CFR 227.7102, and 48 CFR 227.7202, all U.S. Government Users, if any, acquire the Software and its associated documentation with only those rights and subject to the restrictions set forth in this Agreement. Notwithstanding the foregoing, the Software may not be acquired by the U.S. Government pursuant to a contract incorporating clauses prescribed by 48 CFR 27.4, 48 CFR 227.71 or 48 CFR 227.72.

5. Fees and Payment Terms

5.1 Services

For the Services provided under this Agreement, Company will pay Licensor the fees in the amount and manner set forth in the Letter Agreement for Company's use of BI.

5.2 Expenses

Company will pay or reimburse Licensor for, any out-of-pocket expenses, including, without limitation, travel and travel-related expenses, incurred by Licensor at the written request of or with the written approval of Company in connection with the performance of this Agreement. Reasonable and customary expenses incurred by Licensor, including without limitation expenses incurred for travel, including local transportation, lodging and meals, will be billed to Company at Licensor's actual cost.

5.3 Taxes

Customer Initials _____

The fees and expenses due to Licensor as set forth in this Agreement are net amounts to be received by Licensor, exclusive of all sales, use, withholding, excise, value added, ad valorem taxes or duties incurred by Company or imposed on Licensor in the performance of this Agreement or otherwise due as a result of this Agreement. This Section will not apply to taxes based solely on Licensor's net income. Company will be solely responsible for and will pay any and all amounts required in the foreign location to be withheld, charged, deducted, or assessed against such payment amounts, and will promptly furnish Licensor with certificates evidencing payment of such amounts.

5.4 Offset

Fees and expenses due from Company under this Agreement may not be withheld or offset by Company against other amounts for any reason.

6. Technical Requirements

Company must have equipment, software, and Internet access meeting the requirements set forth on Schedule D to be able to use the System and the Network Services. Acquiring, installing, maintaining and operating equipment, Company Materials, and Internet access is solely Company's responsibility, except as otherwise expressly provided in Schedule D. Licensor neither represents nor warrants that the System will be accessible through any web browser release other than those web browser releases indicated in Schedule D.

7. Nondisclosure and Confidentiality

7.1 Obligations

The Receiving Party will hold in confidence and, without the consent of the Disclosing Party, will not use, reproduce, distribute, transmit, transfer, or disclose, directly or indirectly, in any form, by any means, or for any purpose, the Disclosing Party's Proprietary Information. The Receiving Party may only disclose the Proprietary Information to its employees and independent contractors who (i) have a need to know such information in connection with performing under this Agreement; and (ii) are obligated in writing not to disclose the Disclosing Party's Proprietary Information. Without limiting the foregoing, the Receiving Party will exercise at least the same standard of care in protecting the Disclosing Party's Proprietary Information as the Receiving Party does with its own Proprietary Information.

7.2 Identification

All Proprietary Information, except as provided below, will be marked as confidential if in writing or identified as confidential at the time of disclosure or conveyed orally. Notwithstanding the foregoing, Company agrees that any Proprietary Information in whatever form relating to the design, functionality, operational methods or coding of or relating to the System, will be deemed the Proprietary Information of Licensor.

7.3 Exceptions

Each party's obligations under this Section 7 will not apply to information which is shown by written evidence to have: (i) become a matter of public knowledge through no fault of or action by the Receiving Party; (ii) been rightfully in the Receiving Party's possession prior to disclosure by the Disclosing Party; (iii) been rightfully obtained by the Receiving Party subsequent to disclosure to the Receiving Party from a third party who is lawfully in possession of such proprietary information without restriction; (iv) been independently developed by the Receiving Party without resort to the Disclosing Party's Proprietary Information; or (v) required by law or judicial order to be disclosed, provided that prior written notice of such required disclosure is furnished to the Disclosing Party as soon as practicable in order to afford the Disclosing Party an opportunity to seek a protective order.

7.4 Return of Information

Whenever requested by the Disclosing Party, the Receiving Party will immediately return the Proprietary Information to the Disclosing Party or destroy all manifestations of the Proprietary Information and provide the Disclosing Party written certification of such destruction.

7.5 Right to Use Company Information

Company grants to Licensor the non-exclusive right to use Company's Proprietary Information (including any data) obtained under this Agreement for Licensor's internal purposes in order to perform the Services and as otherwise set forth in this Agreement. Nothing in this paragraph will limit Licensor's obligations under this Section 7 in any way.

7.6 Term of Obligations

The Receiving Party's obligations with regard to the Disclosing Party's Trade Secrets remain in effect for as long as such information remains a trade secret under applicable law. The Receiving Party's obligations with regard to the Disclosing Party's Confidential Information shall remain in effect during the

Term of this Agreement and for five (5) years after the expiration or termination of this Agreement for any reason. Notwithstanding the foregoing, any previously executed nondisclosure agreement between Company and Licensor having nondisclosure provisions shall continue in full force and effect. To the extent of any inconsistency or ambiguity between the non-disclosure obligations in such existing agreement and the non-disclosure obligations in this Agreement, the non-disclosure obligations of this Agreement shall govern and control to the extent of such conflict.

7.7 No Restrictions on Deliverables

In the course of Licensor performing Services, Licensor may use enhancements, discoveries, processes, methods, designs and know-how, whether or not copyrightable or patentable, which Licensor may develop during the Term of this Agreement and Company acknowledges that Licensor may use such enhancements, processes, methods, designs and know-how in its business operations with its other customers.

8. Grant Of Rights

8.1 Company Name and Marks

Any use by Licensor of Company's name, or any Company Marks, whether on the Services Website, as part of the Services, in press releases, marketing, advertising or other materials shall be subject to Company's express prior review and written approval, the granting of such approval to be in Company's sole discretion. Subject to the foregoing, Company shall provide Licensor with the Company Marks in the format, resolution, and size and via the method agreed upon by the parties, including updates as necessary, to enable Licensor to perform its obligations under this Agreement. During the Term, Company hereby grants to Licensor a non-exclusive, royalty free, and worldwide license to use the Company Marks (a) on the Services Website and as part of the Services, (b) on agreed upon press releases, marketing, advertising, or other materials, and (c) as otherwise agreed, solely to perform its obligations under this Agreement. Licensor understands and agrees that its use of the Company Marks in connection with this Agreement shall not create any right, title or interest in or to such Company Marks and that all such use and goodwill associated with the Company Marks will inure to the benefit of Company and its licensors. Licensor shall not make use of the Company Marks except as specifically provided for in this Agreement or as expressly authorized in writing by Company prior to such use.

8.2 Company Materials

Subject to the terms and conditions of this Agreement, Company hereby grants to Licensor, during the Term, a non-exclusive, non-transferable, and non-assignable license to use and display the Company Materials: (i) in providing the Services; (ii) on mutually agreed upon press releases, marketing, advertising or other materials; and (iii) as otherwise expressly agreed in writing. Any use of the Company Materials, whether in performance of the Services or on marketing, advertising, or other materials shall be subject to this Section 8.3. Licensor shall not use the Company Materials other than as set forth in this Agreement. Notwithstanding the foregoing, Licensor may reformat Company Materials to fit the format necessary for performance of the Services.

8.3 Reservation of Rights

Company owns and will retain all right, title and interest in its Marks and Materials including without limitation, those Marks and Materials currently used or any which may be developed in the future. Licensor will not copy, distribute, reproduce or use Company's Marks or Materials except as expressly permitted under this Agreement.

8.4 User Data

The Company will own all right, title and interest in and to any information arising out of, or related to, its Users, including all information created as a result of the provision of Services for use by such Users (collectively, "User Data"). As between Licensor and Company, Company will own all User Data that is created, collected, or otherwise generated by Company or Licensor in connection with the Services.

9. Protective Legends

Company will not alter, distort, or remove any confidential, proprietary, copyright, trademark, trade secret, or patent legends that appear on or in the System or Documentation, or attempt to do so.

10. Limited Warranties

10.1 Software Warranty

Licensor warrants that for a period of sixty (60) days after the Access Date (the "Software Warranty Period"), the System will substantially conform to the Documentation delivered by Licensor to Company or available on the Services Website. If Licensor receives written notice during the Software Warranty Period that the System does not perform as warranted, Licensor will undertake to correct the Software free of charge. THE FORGOING IS COMPANY'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF

THE WARRANTY. Licensor warrants that (i) it owns or has sufficient rights to the System to grant all licenses granted on Schedule A and (ii) it has the right to enter into the Agreement. The warranty set forth above is made to and for the benefit of Company only. The warranty will not apply if the System has been used outside the scope of the license, modified other than by Licensor, altered or operated in an unauthorized manner. If Licensor investigates an "error" pursuant to Company's request and such "error" is found to be caused by operator error or erroneous system configuration (such as improper hardware, Company Materials, peripheral equipment, cabling, operating environment, improper data supplied by Company, misuse, or any other cause not inherent in the System Software), Licensor reserves the right to charge and Company shall pay Licensor's then current rates for such investigation.

10.2 Company Warranties

Company warrants to Licensor that (a) during the Term of this Agreement, Company will use the Services, exercise its rights, and perform any obligations under this Agreement in compliance with all applicable laws and regulations and in accordance with this Agreement, and (b) Company holds all rights necessary to any third party intellectual property provided by Company to Licensor for Licensor's use pursuant to this Agreement.

11. Warranty Disclaimer

OTHER THAN AS EXPRESSLY SET FORTH IN SECTION 10 HEREIN OR IN A SCHEDULE, NEITHER LICENSOR, ITS AFFILIATES, LICENSORS OR SUPPLIERS, NOR THEIR OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES MAKES ANY EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, OR REPRESENTATIONS TO COMPANY, OR ANY OTHER PERSON OR ENTITY WITH RESPECT TO THE DELIVERABLES PROVIDED HEREUNDER OR OTHERWISE REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, THE IMPLIED WARRANTY OF NON-INFRINGEMENT, THE IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE ARE EXPRESSLY EXCLUDED AND DISCLAIMED. NO WARRANTY IS MADE THAT USE OF THE SYSTEM, NETWORK SERVICES OR DELIVERABLES WILL BE ERROR FREE OR UNINTERRUPTED, THAT ANY ERRORS OR DEFECTS IN THE DELIVERABLES WILL BE CORRECTED, OR THAT THE DELIVERABLES FUNCTIONALITY WILL MEET COMPANY'S REQUIREMENTS.

12. Limitation of Liability

12.1 LIMITATION OF REMEDY

IN NO EVENT WILL LICENSOR, ITS AFFILIATES, LICENSORS OR SUPPLIERS, OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES BE LIABLE TO COMPANY, OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSS OF GOODWILL IN ANY WAY RELATING TO THIS AGREEMENT OR RESULTING FROM THE USE OF OR INABILITY TO USE THE SYSTEM OR DELIVERABLES OR THE PERFORMANCE OR NON-PERFORMANCE OF ANY SERVICES, INCLUDING THE FAILURE OF ESSENTIAL PURPOSE, EVEN IF LICENSOR HAS BEEN NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

12.2 MAXIMUM LIABILITY

IN NO EVENT WILL LICENSOR'S LIABILITY FOR ANY DAMAGES TO COMPANY OR TO ANY OTHER PERSON OR ENTITY REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE, EVER EXCEED THE FEES RECEIVED BY LICENSOR UNDER THIS AGREEMENT IN CONNECTION WITH THE AFFECTED SERVICES DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH CLAIM.

13. Indemnification

13.1 Licensor

Licensor will indemnify, defend, and hold harmless Company against all claims, actions or proceedings, arising out of any claim that the System provided by Licensor, Licensor Marks, or the permitted use of the same by Company infringes or violates any third party patent, copyright or trade secret right enforceable in the United States. If it is, or, in the reasonable opinion of

Licensor, there is a high probability that it will be, determined by a court of competent jurisdiction that the System or the use thereof infringes any patent, copyright, trade secret or trademark of a third party or if Company is enjoined from using such software or any part of the System, then Licensor, at its sole option and expense, may (i) procure for Company under any applicable patent, copyright, trade secret or trademark the same rights and to the same extent as those granted under this Agreement; (ii) replace such software or any part of the System with other software, which complies with the Documentation; (iii) modify the System, to avoid infringement without material functionality impairment; or (iv) terminate Company's license to the allegedly infringing software or System if (i), (ii) and (iii) are not reasonably practicable, as determined by Licensor. Upon termination under (iv), Licensor shall refund to Company the license fee paid for the allegedly infringing software or System, less a pro-rated amount based on Company's prior use of the allegedly infringing Software. Fulfilling its obligation under this Section 13 will be Licensor's sole obligation to Company and will be Company's sole and exclusive remedy pursuant to this Agreement.

13.2 Company

Company will indemnify, defend, and hold harmless Licensor against all claims, actions or proceedings, arising out of: (a) any claim that the Company Materials or any other content, data, logos, marks or other information provided by Company or its employees or inputted into the System, or the permitted use of the same by Licensor, infringes or violates any third party patent, copyright or trade secret right; (b) use by any Company, or any other person or entity, including without limitation Users not including use by Licensor; and (c) any statements, claims, representations or warranties made by Company or its officers, agents, employees, or representatives relating to the Services, other than as authorized by Licensor in writing or made in Licensor's own writings.

13.3 Obligations

The indemnifying party ("Indemnitor") will pay all damages, settlements, expenses, costs and reasonable attorneys' fees, incurred by the party to be indemnified ("Indemnitee"), arising out of the matters set forth in this Section 13, provided that such payment will be contingent on: (i) prompt notice by the Indemnitee to the Indemnitor in writing of such claim to enable the Indemnitor to defend or mitigate the same; (ii) cooperation by the Indemnitee with the Indemnitor in the defense and/or settlement thereof; at Indemnitor's expense; and, (iii) the Indemnitee allows the Indemnitor to control the defense and all related settlement negotiations, although the Indemnitor will consult with the Indemnitee.

13.4 Exceptions

Licensor will have no indemnity obligation for claims of infringement resulting or alleged to result from any combination, operation, or use of any software or services provided by Licensor with any programs or equipment not supplied by Licensor or not specified in the Agreement for such purpose if such infringement would have been avoided absent such combination, operation. Licensor will have no indemnity obligation for claims resulting or alleged to result from compliance with, or other implementation of, Company specifications. In addition, Licensor will have no indemnity obligation for claims of infringement resulting or alleged to result from any modification of software provided by Licensor by a party other than Licensor if such infringement would have been avoided in the absence of such modifications.

14. Term and Termination

14.1 Generally

This Agreement will commence on the Effective Date, and will remain in effect for twelve (12) months thereafter ("Term"). This agreement will automatically renew for an additional twelve (12) months ("Renewal Term") unless notice of Termination is received by either party thirty (30) days prior to renewal. In the event of a termination of the Agreement for any reason, all Schedules will also automatically terminate.

14.2 Termination

In the event that either party materially defaults in the performance of any of its duties or obligations under this Agreement or a particular Schedule and does not substantially cure such default, or commence a cure, within thirty (30) days after being given written notice specifying the default, the non-defaulting party may, by giving written notice thereof to the defaulting party, terminate this Agreement. Without prejudice to any other remedies, Licensor may terminate this Agreement immediately if Company makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding in bankruptcy, insolvency, or reorganization pursuant to bankruptcy laws, laws of debtor's moratorium or similar laws.

14.3 Effect of Termination

Within thirty (30) days (or earlier upon Licensor's reasonable written request) after the effective date of a termination of this Agreement for any reason,

Company will (i) pay Licensor for all Services performed by Licensor pursuant to the Schedules up to the effective date of such termination and all other amounts owed by Company to Licensor under this Agreement including, but not limited to, all license fees owed by Company after the effective date of termination; and (ii) return to Licensor all Licensor property, including, but not limited to, the Documentation, and all copies thereof, and the Proprietary Information of Licensor. Upon the return of such materials, Company will provide Licensor with a signed written statement certifying that it has returned all Licensor property to Licensor. Upon termination of this Agreement for any reason, all rights and licenses granted by Licensor hereunder to Company will immediately cease.

14.4 Survival

Termination of this Agreement will not affect the provisions regarding Licensor's or Company's treatment of Proprietary Information, provisions relating to the payments of amounts due, indemnification obligations, or provisions limiting or disclaiming Licensor's liability, which provisions will survive such termination.

15. General

15.1 Force Majeure

Neither Licensor nor Company will be liable for failure to perform any of their respective obligations under this Agreement, other than the payment of fees, if such failure is caused by an event outside its reasonable control, including but not limited to, an act of nature, war, or natural disaster.

15.2 Subcontractors

Licensor may, as it deems appropriate, use subcontractors for all or any portion of the Maintenance Services. Licensor may at any time remove and replace any such subcontractors.

15.3 Miscellaneous

This Agreement, including the Schedules and any addenda hereto signed by the parties, constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous agreements, negotiations, representations and proposals, written or oral. This Agreement does not operate as an acceptance of any conflicting or additional terms and conditions and will prevail over any conflicting or additional provision of any purchase order or any other instrument of Company, it being understood that any purchase order issued by Company will be for Company's convenience only. This Agreement will not be construed to create any employment relationship, partnership, joint venture or agency relationship or to authorize any party to enter into any commitment or agreement binding on the other party. This Agreement will be binding upon and inure to the benefit of the parties, their legal representatives, permitted transferees, successors, and assigns as permitted by this Agreement. Except as otherwise set forth in this Agreement, this Agreement and all rights and obligations may not be assigned (by operation of law or otherwise) in whole or in part by Company, and any such attempted assignment will be void and of no effect. No delay or failure in exercising any right hereunder and no partial or single exercise thereof will be deemed to constitute a waiver of such right or any other rights hereunder. If any provision hereof is declared invalid by a court of competent jurisdiction, such provision will be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement will be valid and enforceable to the fullest extent permitted by applicable law. All notices required to be given hereunder will be given in writing and will be deemed delivered when delivered either by hand, or by facsimile (with confirmation copy available upon request) or upon two (2) days after mailed by certified mail with proper postage affixed thereto, or by a nationally recognized overnight delivery service addressed to the signatory at the address set forth on the signature page, or such other person and address as may be designated from time to time in writing. All such communications will be deemed received by the other party upon actual delivery. This Agreement will be exclusively construed, governed and enforced in all respects in accordance with the internal laws (excluding all conflict of law rules) of the State of Georgia and any applicable federal laws of the United States of America, as from time to time amended and in effect. Each party agrees that any claim or cause of action whether in law or equity, arising under or relating to this Agreement may be brought in a court of appropriate jurisdiction in the State of Georgia and each party hereby submits to such jurisdiction. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply in any respect to this Agreement or the parties hereto. No modifications, additions, or amendments to this Agreement will be effective unless made in writing and signed by duly authorized representatives of the parties. This Agreement may be executed in any number of counterparts, each of which will be deemed an original but all of which together will be deemed for all purposes to constitute one and the same instrument. Signatures transmitted and received via

facsimile or other electronic means will be treated as original signatures for all purposes of this Agreement.

Glossary

"Access Date" means, with respect to the Network Services, the date that Licensor first grants Company access to the System as indicated on Schedule E.

"Account IDs" mean the login passwords and identification names issued for access and utilized by Company and their Users to access and utilize the Network Services as provided herein.

"Company Materials" means the software, data, algorithms content, data information and/or any other materials provided by Company, reasonably required for Licensor to provide the Services hereunder or under a Schedule, and includes those items required to be provided by Company in accordance with Section 6 herein.

"Company Website" means collectively, the points of presence maintained by or on behalf of Company on the Internet.

"Confidential Information" means a Disclosing Party's information (in tangible or intangible form) that is disclosed under this Agreement that is valuable to the disclosing party and not generally known by the public, but which does not rise to the level of a trade secret under applicable law.

"Licensor Server" means the hardware platform or network system owned or operated by, or on behalf of, Licensor where the System resides and is accessed by Company and Users via an Internet connection to the server using an approved Web browser.

"Derivative Works" means any suggestions, contributions, enhancements, improvements, additions, modifications, or derivative works to the referenced software or other materials.

"Disclosing Party" means the party disclosing or otherwise making available Confidential Information or Trade Secrets under this Agreement.

"Documentation" means the user documentation and any other operating, training, and reference manuals relating to the use of the System, as supplied by Licensor to Company, as well as any Derivative Works thereof.

"Intellectual Property Rights" means any and all rights existing from time to time in any jurisdiction under patent law, copyright law, moral rights law, trade-secret law, semiconductor chip protection law, trademark law, unfair competition law, or other similar rights.

"Link" means a URL hidden behind a formatting option that may take the form of a colored item of text (such as a URL description), logo or image, and which allows a user to automatically move to or between WWW pages, WWW sites or within a WWW document when a user clicks his/her mouse on that formatting option.

"Maintenance Services" means Customization Services, Account Services, Maintenance Services and Additional Services.

"Marks" means service marks, trademarks, trade names, logos, and any modifications to the foregoing that may be created during the Term.

"Materials" means the data, materials, pictures, documentation, audio, video, animations, artistic works, writings, and other works of authorship.

"Services Website" means the uniform resource locators which may be used to access the System via the Internet.

"System Pages" means the web site page(s) located on the Licensor Server as part of the Network Services.

"Proprietary Information" means individually and collectively Trade Secrets and Confidential Information.

"Receiving Party" means the party receiving or otherwise having access to Proprietary Information under this Agreement.

"Return Links" means a navigational feature included on a Web or Intranet page accessed through a Link from another Web or Intranet page that allows a Visitor to return to the Web page from which the Visitor originated.

"Trade Secrets" mean information (in tangible or intangible form) which is a trade secret under applicable law.

"Users" mean the individuals authorized by Company to access and use the System, including Company employees, representatives and agents.

SCHEDULES

SCHEDULE A

This Schedule A — System License ("Schedule A") is between Licensor and the Company identified on the cover page of the Agreement identified above.

1. **DEFINITIONS.** As used in this Schedule A, and in addition to any other terms defined herein, the capitalized terms used herein will have the meanings set forth in the Glossary at the end of the Terms and Conditions.

2. GRANT OF LICENSE

2.1 Grant. Subject to the Terms and Conditions and this Schedule, including, but not limited to, payment by Company of the applicable fees set forth in the Letter Agreement, during the Term and any renewal terms, Licensor grants to Company a limited, non-exclusive, nontransferable license to:

- (i) remotely access and use the System via a Web browser over an Internet connection to the Licensor Server solely for Company's and its customers and their Users' internal purposes; and
- (ii) make a reasonable number of copies of the Documentation provided in connection with the System for use internally by Company in connection with the Company's exercise of the foregoing rights.

2.2 Weather Data. All weather data may only be used in the United States of America and may have conditions placed on its international commercial use. Weather data provided in connection with the Services can be used within the U.S. or for non-commercial international activities without restriction. The non-U.S. weather data cannot be redistributed for commercial purposes.

2.3 Access. As soon as practicable after Licensor's receipt of the fully executed Agreement, Licensor shall provide the applicable System Services to Company according to the time-table set forth on Schedule E.

2.4 Account IDs. Licensor or Company shall assign each User an Account ID. Each Account ID may be used only by a single individual. No Account ID may be used by a single individual on more than one workstation at any one time. Company acknowledges that the use of a single Account ID by more than one User shall be grounds for immediate termination by Licensor and forfeiture of any unearned fees or deposits.

3. COMPANY OBLIGATIONS

In addition to other obligations under this Agreement Company (i) may not impose any liabilities upon Licensor, (ii) may not grant any warranty to the User on behalf of Licensor, and (iii) must be consistent with Licensor's Intellectual Property Rights in the System and Services.

4. UPTIME COMMITMENT

4.1 Availability. The Network Services will be provided to Company and its Users twenty-four hours a day, seven days a week less the period during which the Network Services are not available due to one or more of the following events (collectively, the "Excusable Downtime"):

4.1.1 Scheduled network, hardware or service maintenance;

4.1.2 The acts or omissions of Company or Company's employees, agents, contractors, vendors, Users or anyone gaining access to the Network Services by means of Company's Account or User Accounts.

4.1.3 A failure of the Internet and/or the public switched telephone network;

4.1.4 The occurrence of any event that is beyond Licensor's reasonable Control, or

4.1.5 At Company's direction, Licensor restricting Company and Users' access to the Network Services.

4.2 Commitment. Subject to Company satisfying its obligation herein, Licensor guarantees that the Network Services will be available to Company and Users at least 98.5% of the time during each calendar month, excluding Excusable Downtime ("Uptime Commitment"). If Licensor fails to satisfy the Uptime Commitment during a month then Licensor will credit to the Company a pro-rated portion of the System License Fee (as defined below) in the first month of the next succeeding calendar quarter following the failure. For purpose of this Section 3.2 "pro-rated portion of the System License Fee" means the product obtained by multiplying 1/12th of the applicable System License Fee by a fraction, the numerator of which will be the number of hours that the Network Services did not satisfy the Uptime Commitment, and the denominator of which will be the total number of hours during the month that such failure occurred less excusable Downtime. The foregoing refund will be Company sole and exclusive remedy for Licensor's failure to comply with the Uptime Commitment.

5. **License Fees.** In consideration of the license granted herein with respect to the System Services, Company agrees to pay Licensor the fees set forth in the Letter Agreement upon execution of the Agreement and thereafter for Company's use of B1.

SCHEDULE B

This Schedule B — Maintenance Services ("Schedule B") is between Licensor and the Company identified on the cover page of this Agreement identified above.

1. Definitions. As used in this Schedule B, and in addition to any other terms defined herein, the capitalized terms used herein will have the meanings set forth in the Glossary at the end of the Agreement Terms and Conditions.

2. Maintenance Services

2.1 Licensor's General Responsibilities. During the Term of this Agreement and with respect to the System, Licensor will provide the following Maintenance Services:

2.1.1 Respond to any defect report it receives in accordance with the schedule set forth in Section 2.2 below;

2.1.2 Maintain a telephone number and technician to receive calls on a seven (7) days a week, twenty-four (24) hours a day basis, nationally recognized holidays and specific Licensor holidays, excepted, which include New Year's Day, Martin Luther King, Jr. Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and day after Thanksgiving, Christmas Eve and Christmas Day, concerning emergency problems and questions;

2.1.3 Clarify functions and features of the System during Licensor's normal business hours;

2.1.4 Provide technical support and guidance in the operation of the System to Company's Systems administrator during Licensor's normal business hours;

2.1.5 Provide System error analysis and correction as set forth in the schedule in Section 1.2 below;

2.1.6 Provide prompt notification and assistance, at Licensor's reasonable discretion, in the event Licensor determines a problem that is covered by this Section 2 exists; and

2.1.7 Provide a designated, knowledgeable support contact for providing technical support, who may be changed by written notice.

2.2 Response Times. Licensor will use commercially reasonable efforts to provide Maintenance Services in accordance with the following response times:

Error Level	Error Classification	Initial Response Time	Resolution Response Time
1	Critical	6 hours	48 hours
2	Severe	14 hours	3 business days
3	Medium	26 hours	10 business days
4	Low	26 hours	Next Release

"Initial Response Time" is the time for a return call from Licensor to Company to acknowledge the defect and to estimate the time for providing the resolution.

"Resolution Response Time" is the time to provide a documented fix or repair (which may be a workaround) that restores full functionality. Any such fix will be deemed an "Update".

"Error Classifications":

Critical: Company experiences real or perceived data loss or corruption or an essential part of the system is unusable. Unusable means that the Company is not able to use an essential part of the system because of its design or a defect. Essential parts of the system are those that Company needs to use the system effectively.

Severe: Company's effectiveness is severely compromised for a particular, essential part of the system, although all other essential parts of the system can be used. This can be measured by comparison to Company's expectations, previous products, previous releases of the same product or quality objectives established for the product or system. Effectiveness refers to the Company's productivity and satisfaction with the work process provided by the system. Satisfaction with the work process includes concerns such as frustrating processes that affect the system's fitness for use.

Medium: Company's effectiveness is compromised some, though not severely. All essential parts of the system can be used. This classification is appropriate for all parts of the system, essential or otherwise.

Low: Any other material deviation from Documentation or Specification

2.3 Additional Charges. If a problem reported (or if Company otherwise requests assistance) is outside the scope of this Section 2, Licensor will notify Company to that effect and reserves the right to charge Company at

Licensor's then current standard hourly rates, for which Company agrees to pay Licensor promptly upon receiving an invoice.

2.4 Company's General Responsibilities. Company will be responsible for:

2.4.1 Reporting errors promptly.

2.4.2 Promptly paying all fees and other amounts payable hereunder in accordance with the Agreement.

2.4.3 Providing sufficient information for Licensor to duplicate the circumstances of a reported System defect or duplicate the error, as described in the Documentation, so Licensor can duplicate the error, assess the situation, and/or undertake any needed or appropriate corrective action hereunder.

2.4.4 Otherwise following instructions or suggestions from Licensor regarding use, maintenance, upgrades, repairs, workarounds, or other related matters.

2.4.5 Designating two (2) members of its technical staff to serve as Company's System Administrators to contact Licensor with support issues.

2.4.6 Company understands and agrees that Licensor's successful response and provision of Training Services to Company is subject to Company's assistance and compliance regarding (i) at Licensor's reasonable request, Company will provide Licensor with reasonable access to Company's personnel and equipment during normal business hours to discuss and assess any problems and/or requests for assistance; and (ii) Company will document and promptly report to Licensor all errors or malfunctions of the System. It is Company's responsibility to carry out procedures necessary at Company's facilities for the rectification of errors or malfunctions within a reasonable time after such procedures have been received from Licensor.

3. Performance

3.1 Project Control. Licensor has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed the Maintenance Services to be performed by Licensor hereunder unless otherwise provided herein.

3.2 Subcontractors. Licensor may, as it deems appropriate, use subcontractors for all or any portion of the Maintenance Services. Licensor may at any time remove and replace any such subcontractors.

3. Ownership and Licenses. Company acknowledges that Licensor or its third party suppliers own all rights, title and interest in the Deliverables provided and any and all enhancements, suggestions, contributions, modifications or additions that are contributed or added thereto by Licensor, the Company or others, excluding any third party Proprietary Information provided by Company and any Company Proprietary Information (collectively, the "Deliverables Provided"), including but not limited to all Intellectual Property Rights therein. Company also acknowledges that the Deliverables provided contain Proprietary Information belonging to Licensor and its third party suppliers, and that nothing herein gives Company any right, title or interest in such Deliverables except as otherwise expressly set forth in this Schedule B.

4. Maintenance and Service Fees. Company will pay to Licensor the fees for the applicable Maintenance Services as set forth in the Letter Agreement.

5. Company Representations and Warranties. During the term of this Agreement, Company may provide or make available to Licensor certain Company Materials in connection with Licensor performing Customization or Training Services. Company represents and warrants that Company is authorized to provide Licensor such Company Materials and that Licensor is authorized to use such Company Materials solely for the purpose of providing the Services. In addition to any other indemnification obligations it may have under the Agreement, Company will indemnify, defend and hold harmless Licensor from and against any and all claims (including, but not limited to, claims of infringement of Intellectual Property Rights), liabilities, losses, damages, causes of action or injuries, together with costs and expenses, including reasonable attorneys' fees, arising out of or resulting from Company's failure to comply with the foregoing representations and warranties.

SCHEDULE C

This Schedule C— System Description & Network Services Description ("Schedule C") is between Licensor and the Company identified on the cover page of the Agreement identified above.

1. System. The System consists of

1.1 A local weather data feed to enable the provision of weather normalized usage information through the System

1.2 An interface to the billing cycle data feed Company's billing system as it exists on the Effective Date. Any modifications or technical development required to maintain the Interface with future versions or upgrades to such Company billing system will be provided by Licensor on a time and materials basis.

1.3 The Billing/insights Call Center Support System to utilize the billing cycle data to provide sophisticated analysis and reporting

1.4 A user interface for Company's call center representative high bill call resolution support function, which includes Licensor's standard CSR call scripting.

2. Network Services. The Network Services consists of hosting facilities and servers, enhanced by power conditioners, uninterruptible power systems and emergency standby power generators, consistent with the delivery of the service using full bandwidth T-1 access over fiber-optic lines to high-speed multiprocessor servers, including security for the system and its links consistent with their placement behind a firewall system. In addition, separate embedded security systems are provided through the use of Windows 2003 operating system security functions and Microsoft SQL Server database security systems.

SCHEDULE D

This Schedule D— Technical Requirements ("Schedule D") is between Licensor and the Company identified on the cover page of the Agreement identified above.

Requirements for Access to Network Services include, but may not be limited to:

1. **Access to the internet via an internet service provider (ISP)**
2. **Internet Browser:**
 - 2.1 Internet Explorer 4.0 or higher with temporary session cookies allowed
 - 2.2 Netscape Navigator 4.0 or higher with temporary session cookies allowed
 - 2.3 Browser compatible with (a) or (b) with temporary session cookies allowed

Schedule E

Terms of Use

BY ACCESSING THE WEB SITE LOCATED AT WWW.LODIELECTRIC.APOGEE.NET, USING THIS SITE OR ANY RELATED WEB PAGES INCLUDING WITHOUT LIMITATION ANY CONTENT, TOOLS OR APPLICATIONS ACCESSIBLE ON SUCH WEB PAGES (COLLECTIVELY REFERRED TO AS "SITE") IN ANY MANNER, YOU ("YOU", "YOUR" OR "USER") AGREE THAT YOU HAVE READ AND AGREE TO THESE TERMS OF USE THAT ARE POSTED ON THE SITE. THE SITE IS PROVIDED BY CITY OF LODI AND/OR ITS SUPPLIERS AND LICENSORS (COLLECTIVELY REFERRED TO AS "WE", "US" OR "COMPANY").

USE OF SITE AND THE TOOLS

This Site provides access to certain content, calculators and other applications related to energy and energy use and related matters ("Content"). The tools use calculations based on various factors, including information that You provide. The accuracy of any output from such tools will reflect the information You submit. Since information changes from time to time, we cannot guarantee that the Content is up-to-date or accurate. In an effort to continue to provide you with as complete and accurate information as possible, information may be changed or updated from time to time without notice. The applications and tools made available on the Site are proprietary and may not be reverse engineered, decompiled, disassembled, copied, distributed or modified by You. You agree not to modify, publish, transmit, transfer or sell, reproduce, create derivative works from, distribute, perform, display, or in any way exploit, any of the Content, in whole or in part, except as expressly permitted in this Agreement. We may terminate your access to the Site if you fail to comply with any of the terms or conditions of these Terms of Use.

Your responsibilities

If You are provided with login information to access the Site, You are responsible to maintain the privacy and security of your login information,

including user names and passwords, and not allow others to use the login information. You will notify us of any breach in secrecy of your login information. You agree to immediately notify Company by e-mail to [insert email address] of any potential breaches of secrecy of the login information and of the departure of any employee with access to the login information. You agree not to link, "frame" or "mirror" any Content or information contained on or accessible from the Site without the prior written approval of the Company or its licensors, as may be appropriate.

USE OF THE SITE.

You agree not to use the Site for any unlawful purpose or in anyway that might harm, damage, or disparage any other party. Without limiting the proceeding sentence and by way of example, You agree that You will not: Threaten, harass, abuse, slander, defame or otherwise violate the legal rights (such as rights of privacy and publicity) of others; Publish, distribute or disseminate any inappropriate, profane, vulgar, defamatory, infringing, obscene, tortious, indecent, unlawful, immoral or otherwise objectionable material or information; Create a false identity or impersonate another for the purpose of misleading others as to the identity of the sender or the origin of a message, including, but not limited to, providing misleading information to any feedback system employed through the Site; Transmit or upload any material that contains viruses, Trojan horses, worms, time bombs, cancelbots, or any other harmful or deleterious software programs; Interfere with or disrupt the Site, networks or servers connected to the Site or violate the regulations, policies or procedures of such networks or servers; Attempt to gain unauthorized access to the Site, logins and passwords of others, or computer systems and networks connected to the Site; Permit anyone other than Your authorized users to gain access to or use the Site, or logins and passwords of You; Upload or otherwise transmit any information or content that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party; Upload, post or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation (commercial or otherwise); or Use the Site in any manner whatsoever that could lead to a violation of any federal, state or local laws, rules or regulations.

You agree to:

Comply with all notices, instructions and rules posted on the Site; and Implement all Internet access and all security procedures required to use the Site at the sole expense of You.

THIRD PARTY CONTENT AND LINKS

From time to time, the Site may contain references or links to third-party materials (including without limitation web sites) not controlled by the Company or its suppliers or licensors. The Company provides such information and links as a convenience to you and should not be considered endorsements of such sites or any content, products or information offered on such sites. You acknowledge and agree that the Company is not responsible for any aspect of the information or content contained in any third party materials or on any third party sites accessible or linked to the Site.

INDEMNITY

You agree to indemnify and hold harmless the Company and its licensors and suppliers, and their respective directors, officers, employees, agents and contractors, from all damages, injuries, liabilities, costs, fees and expenses (including, but not limited to, legal and accounting fees) arising from or in any way related to your violation of these Terms of Use or misuse of the Site by you or any of your employees, contractors or agents.

LIMITATIONS

IN NO EVENT WILL THE COMPANY OR ITS LICENSORS OR SUPPLIERS BE LIABLE TO ANY PARTY FOR ANY DIRECT, INDIRECT, SPECIAL OR OTHER CONSEQUENTIAL DAMAGES FOR ANY USE OF THIS SITE, OR ANY OTHER LINKED WEB SITE, INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS, BUSINESS INTERRUPTION, OR OTHERWISE, EVEN IF THE COMPANY OR ITS LICENSORS OR SUPPLIERS IS EXPRESSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE COMPANY OR ITS LICENSORS OR SUPPLIERS BE LIABLE

FOR ANY DIRECT DAMAGES INCURRED BY YOU IN EXCESS OF FIFTY DOLLARS.

DISCLAIMERS

THE COMPANY AND ITS LICENSORS AND SUPPLIERS HEREBY DISCLAIM ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

MISCELLANEOUS

The Company may amend, modify or otherwise change these Terms of Use by posting such modifications on the Site. In the event any of the provisions of the Terms of Use are held unenforceable or invalid by a court of competent jurisdiction, such provisions shall be deemed severed from the applicable agreement, and the remaining provisions thereof shall remain in full force and effect. Failure of any party to enforce, in any one or more instances, any of the provisions herein shall not be construed as a waiver of the future performance of any such terms or conditions. No consent to a breach of any express or implied term of the Terms of Use or any other notice, directive, or rule otherwise posted on the Site shall constitute a consent to any prior or subsequent breach. These Terms of Use will be governed by the laws of the State of Georgia, United States of America

A handwritten signature or mark, possibly a stylized 'C' or 'G', located in the bottom right corner of the page.

APPENDIX C
Certificate of Insurance

Customer Initials _____

A handwritten signature in black ink, consisting of a vertical line with a loop at the bottom and a small flourish at the top.



CERTIFICATE OF LIABILITY INSURANCE

OP ID SS

DATE (MM/DD/YYYY)

08/06/10

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Siegel Insurance, Inc. 2987 Clairmont Road Suite 425 Atlanta GA 30329 Phone: 404-633-6332 Fax: 404-633-9388		CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL: ADDRESS: PRODUCER CUSTOMER ID #: APOGE-1	
INSURED Apogee Interactive Inc. and Demand Exchange, LLC 100 Crescent Centre Pkwy S#450 Tucker GA 30084-5313		INSURER(S) AFFORDING COVERAGE INSURER A: Chubb Group Of Ins. Co. INSURER B: Seneca Insurance Co INSURER C: INSURER D: INSURER E: INSURER F:	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY						
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			35364828EZG	01/01/10	01/01/11	EACH OCCURRENCE \$ 1000000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1000000
							MED EXP (Any one person) \$ 10000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY \$ 1000000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						GENERAL AGGREGATE \$ 2000000
							PRODUCTS - COM/OP AGG \$ 2000000
							\$
A	AUTOMOBILE LIABILITY						
	<input type="checkbox"/> ANY AUTO						COMBINED SINGLE LIMIT (Ea accident) \$ 1000000
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per person) \$
	<input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per accident) \$
A	<input checked="" type="checkbox"/> HIRED AUTOS			35364828EZG	01/01/10	01/01/11	PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> NON-OWNED AUTOS			35364828EZG	01/01/10	01/01/11	\$
							\$
A	UMBRELLA LIAB						
	<input checked="" type="checkbox"/> EXCESS LIAB			79865156	01/09/10	01/09/11	EACH OCCURRENCE \$ 2000000
	<input type="checkbox"/> DEDUCTIBLE						AGGREGATE \$ 2000000
	<input type="checkbox"/> RETENTION \$						\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			0871700861	01/01/10	01/01/11	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT \$ 1000000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1000000
							E.L. DISEASE - POLICY LIMIT \$ 1000000
B	Professional Liab			TEOL010107	01/01/10	01/01/11	Per Claim 1000000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
The City of Lodi, its Elected and Appointed Boards, Commission, Officers, Agents, Employees and Volunteers are named as Additional Insured but only insofar as their contract is concerned per attached CG2010.

CERTIFICATE HOLDER**CANCELLATION**

CITY OF City of Lodi 221 West Pine Street Lodi CA 95241-1910	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	---

RESOLUTION NO. 2010-_____

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING PUBLIC BENEFIT PROGRAMS, AND
FURTHER AUTHORIZING THE CITY MANAGER TO
EXECUTE NECESSARY PROFESSIONAL SERVICES
AGREEMENTS

=====

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby approves the following Public Benefit Programs as described on Exhibit A attached hereto:

- 1) Lodi Keep Your Cool Program - \$50,000.00
- 2) Lodi VendingMiser Installation Program - \$25,000.00
- 3) Lodi On-Line Energy Audit Program - \$29,800.00

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute Professional Services Agreements required for each Public Benefit Program as outlined in Exhibit A attached.

Dated: September 1, 2010

=====

I hereby certify that Resolution No. 2010-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held September 1, 2010, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

- **Lodi Keep Your Cool Program:** This targeted, direct-install energy conservation program will soon enter its third calendar year here in Lodi. The program provides rebates for participating, eligible commercial customers, assigned to the either the G1 or G2 electric utility rate. The majority of customers participating will be restaurants, mini-markets, donut shops, small grocery stores, etc. For the 2010-2011 program years, the installed energy efficiency measures will include: high efficiency motors, fan motor controllers, anti-sweat heater controls, and infiltration barriers, such as gaskets, strip curtains and door closers. In light of the fact that 30% to 50% of a restaurant or grocery store's annual energy costs are consumed by refrigeration, this is an excellent, targeted program in helping customers reduce their operating costs. Depending on customer participation, the program will save an estimated 150,000-300,000 kilowatt hours annually, thus reducing operating costs for these customers. Note: for the 2009-2010 program year, Lodi Keep Your Cool assisted 22 commercial customers, generating in excess of 400,000 kilowatt hours of energy savings annually. The program (including all material installation) will again be administered by the Bay Area Gasket Guy, with the professional services agreement for \$50,000.
- **Lodi Vending Miser Installation Program:** This is a new energy conservation program designed for commercial/industrial customers. SBW Consulting, Incorporated of Bellevue, Washington will administer this direct-install program, retrofitting over 110 inefficient cold beverage vending machines throughout the community. As part of the \$25,000 professional services contract, SBW will identify the locations of the vending machines for retrofit. SBW will then physically retrofit the units with technology that serves as an energy management system. This system automatically reduces energy load to the vending machine (shutting off lighting and cycling the unit's motor off), when the machine is not in frequent use by patrons, thus serving as an effective energy control device. It is anticipated that annual energy savings will top 175,000 kilowatt hours for the 110 retrofitted cold beverage vending machines.
- **Lodi On-Line Energy Audit Program:** Lodi Electric Utility offers on-line energy audits for residential customers. The on-line service, known as the HomeEnergySuite, is provided by the firm APOGEE Interactive. The on-line tool provides customers with the ability to determine how their monthly energy dollars are expended. The tool also provides access to lighting and appliance calculators, an educational 'Kids Korner' and an energy conservation reference library. On average, fifty to seventy-five customers per month utilize this free service. The professional services contract with APOGEE Interactive for the 2010-2011 program year is for \$29,800. In addition to maintaining the database/on-line tool, APOGEE Interactive also provides monthly updates on customer "hits" (how many customers are utilizing the service), and continually updates the energy conservation reference library with new and emerging energy technologies. New for the 2010-2011 fiscal year is the addition of a small business on-line energy audit program, which will allow customers to identify energy use patterns via the computer, similar to the aforementioned residential on-line audit program.



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing the City Manager to Enter Into a Professional Services Agreement for Preliminary Engineering of Westside Substation with Auriga Corporation of Milpitas, CA (\$147,110) (EUD)

MEETING DATE: September 1, 2010

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to enter into a professional services agreement for preliminary engineering of Westside Substation with Auriga Corporation of Milpitas, CA in an amount not to exceed \$147,110.

BACKGROUND INFORMATION: On October 21, 2009, the City Council approved the request for proposal and authorized the advertisement for bids to perform the preliminary engineering work on the Westside Substation.

The Electric Utility Department advertised bid documents on May 18, 2010. Six consulting engineering firms asked for the bid document. On July 14, 2010, staff received bid proposals with the following results:

SANTEC Consulting Services Inc. of Sacramento, CA	\$124,000.00*
R.W. Beck, Inc. of Seattle, WA	\$247,990.00
Electric Power System, Inc. of Fresno, CA	No Bid Cost*
Pike Electric, Inc. of San Ramon, CA	\$87,500.00*
IEC Corporation of Folsom, CA	\$138,124.00*
Auriga Corporation of Milpitas, CA	\$147,110.00

*Note: Proposals were not responsive with omissions of required materials.

Staff reviewed all six received proposals and found that only the proposals of RW Beck, Inc. (RW Beck) and Auriga Corporation (Auriga) complied with the requirements of the Westside Substation Preliminary Engineering Request for Proposal. RW Beck's proposal is approximately 42 percent over the budget, and Auriga's proposal is approximately 19 percent below the \$175,000 budget for this preliminary engineering project. Auriga is experienced in performing various engineering designs and studies of high voltage substation, transmission and distribution systems. Auriga also has assembled and organized a well-qualified and experienced project team that will be dedicated to this project. EUD has previously utilized Auriga's services, expertise and skills in evaluating the 60 kV Power Line Project to the west.

The project cost for this Westside Substation Preliminary Engineering Project will be recovered from developers under the City's Transmission and Substation System impact fee program as provided by Lodi Electric's Rules and Regulations Resolution No. 2007-22.

FISCAL IMPACT: Not to exceed \$147,110 and will be recovered through the City's Transmission and Substation System impact fee as per Resolution No. 2007-22.

APPROVED: _____
Konradt Bartlam, Interim City Manager

FUNDING: Included in the EUD FY 2010/11 Budget Account No. 161677.

Jordan Ayers
Deputy City Manager/Internal Services Director

Elizabeth A. Kirkley
Electric Utility Director

Prepared By: Demy Bucaneg, Jr., P.E., Assistant Electric Utility Director
Weldat Haile, P.E., Senior Power Engineer

EAK/DB/lst

AGREEMENT FOR PROFESSIONAL SERVICES

ARTICLE 1 PARTIES AND PURPOSE

Section 1.1 Parties

THIS AGREEMENT is entered into on _____, 2010, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and Auriga Corporation (hereinafter "CONSULTANT").

Section 1.2 Purpose

CITY selected the CONSULTANT to provide the services required in accordance with attached Scope of Services, Attachment A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONSULTANT for Preliminary Engineering for the New Westside Substation (hereinafter "Project") as set forth in the Scope of Services attached here as Attachment A. CONSULTANT acknowledges that it is qualified to provide such services to CITY.

ARTICLE 2 SCOPE OF SERVICES

Section 2.1 Scope of Services

CONSULTANT, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Attachment A.

Section 2.2 Time For Commencement and Completion of Work

CONSULTANT shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONSULTANT shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONSULTANT shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be counted against CONSULTANT's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONSULTANT shall remain

in contact with reviewing agencies and make all efforts to review and return all comments.

Section 2.3 Meetings

CONSULTANT shall attend meetings as may be set forth in the Scope of Services.

Section 2.4 Staffing

CONSULTANT acknowledges that CITY has relied on CONSULTANT's capabilities and on the qualifications of CONSULTANT's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONSULTANT, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONSULTANT of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONSULTANT of any changes of CONSULTANT's project staff prior to any change.

CONSULTANT represents it is prepared to and can perform all services within the Scope of Services (Attachment A) and is prepared to and can perform all services specified therein. CONSULTANT represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONSULTANT to practice its profession, and that CONSULTANT shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

Section 2.5 Subcontracts

Unless prior written approval of CITY is obtained, CONSULTANT shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

ARTICLE 3
COMPENSATION

Section 3.1 Compensation

CONSULTANT's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Attachment B and incorporated by this reference.

CONSULTANT shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

Section 3.2 Method of Payment

CONSULTANT shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONSULTANT's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

Section 3.3 Costs

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY.

Section 3.4 Auditing

CITY reserves the right to periodically audit all charges made by CONSULTANT to CITY for services under this Agreement. Upon request, CONSULTANT agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONSULTANT agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONSULTANT agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONSULTANT further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

ARTICLE 4
MISCELLANEOUS PROVISIONS

Section 4.1 Nondiscrimination

In performing services under this Agreement, CONSULTANT shall not discriminate in the employment of its employees or in the engagement of any sub

consultant on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

Section 4.2 ADA Compliance

In performing services under this Agreement, CONSULTANT shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

Section 4.3 Indemnification and Responsibility for Damage

CONSULTANT to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONSULTANT, any subcontractor employed directly by CONSULTANT, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

Section 4.4 No Personal Liability

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

Section 4.5 Responsibility of CITY

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

Section 4.6 Insurance Requirements for CONSULTANT

CONSULTANT shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Attachment C attached hereto and incorporated by this reference.

Section 4.7 Successors and Assigns

CITY and CONSULTANT each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONSULTANT shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY

Section 4.8 Notices

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY: City of Lodi
 221 West Pine Street
 P.O. Box 3006
 Lodi, CA 95241-1910

To CONSULTANT: Auriga Corporation
 Attn: Parkash Daryani
 890 Hillview Court, Suite 130
 Milpitas, CA 95035

Section 4.09 Cooperation of CITY

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

Section 4.10 CONSULTANT is Not an Employee of CITY

CONSULTANT agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of CITY and not an employee of CITY. CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONSULTANT meet specific standards without regard to the manner and means of accomplishment thereof.

Section 4.11 Termination

CITY may terminate this Agreement, with or without cause, by giving CONSULTANT at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONSULTANT shall be entitled to payment as set forth in the attached Attachment B to the extent that the work has been performed. Upon termination, CONSULTANT shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for

contracts entered into by CONSULTANT with third parties in reliance upon this Agreement.

Section 4.12 Confidentiality

CONSULTANT agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONSULTANT and clearly marked by CONSULTANT as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONSULTANT. CONSULTANT acknowledges that CITY is subject to the California Public Records Act.

Section 4.13 Applicable Law, Jurisdiction, Severability, and Attorney's Fees

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

Section 4.14 City Business License Requirement

CONSULTANT acknowledges that Lodi Municipal Code Section 3.01.020 requires CONSULTANT to have a city business license and CONSULTANT agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

Section 4.15 Captions

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

Section 4.16 Integration and Modification

This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

Section 4.17 Contract Terms Prevail

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

Section 4.18 Ownership of Documents

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONSULTANT shall allow CITY to inspect all such documents during CONSULTANT's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONSULTANT to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONSULTANT harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

Section 4.19 Authority

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement as of the date first above written.


CITY OF LODI, a municipal corporation

ATTEST:

By _____
RANDI JOHL
CITY CLERK

By _____
KONRADT BARTLAM
INTERIM CITY MANAGER

APPROVED AS TO FORM:
D. STEPHEN SCHWABAUER, City Attorney

By _____
Janice D. Magdich
Deputy City Attorney 

By: _____
Its: _____

Attachments:

Attachment A – Scope of Services

Attachment B – Fee Proposal

Attachment C – Insurance Requirements

ATTACHMENT A

SCOPE OF WORK

The complete build-out of the Westside Substation facility is described in the 'PROJECT DESCRIPTION' Section above. It shall be noted that the substation yard will be constructed two feet (2 ft) below existing grade. The scope of work for this RFP for Preliminary Engineering Services of Westside Substation is itemized below and is shown on the following Figure and Exhibits:

Exhibits

- Exhibit 1 – Project Site
- Exhibit 2 – Substation Layout
- Exhibit 3 – Substation Isometric View
- Exhibit 4 – One-Line Drawing

Figure

Figure 1 – Soil Resistivity Testing Layout

1. Soil Resistivity Test and Geotechnical Study

- a. Soil Resistivity Test – Soil resistivity data will be used for substation ground grid design and ground potential rise study. Conduct soil resistivity measurements in five (5) areas of the substation project site. Two (2) along the lengths, two (2) along the widths, and one (1) diagonally through the center as shown in Figure 1: Soil Resistivity Testing Layout. Resistivity test shall be done using the Wenner Four Point method and shall be in accordance with ASTM G57-06, IEEE Standards 442, 142, 81 and 80. Perform calculations and build a soil resistivity profile of the project site in tabular and graphical format.
- b. Geotechnical Study – The geotechnical report will be the reference for project design, grading, foundations, seismic design, perimeter block wall fence, underground utilities, excavations, pavements, construction and other geotechnical aspects of the project. Services shall include the following:
 - i. Compile and review available geotechnical and geologic data pertinent to the project vicinity;
 - ii. Conduct field exploration and investigation that consist of drilling borings within the area of the proposed development to explore subsurface conditions at the project site;
 - iii. Perform laboratory testing of samples obtained during the field investigation to evaluate relevant physical and engineering parameters of the subsurface soils; and,
 - iv. Analyze data to develop geotechnical conclusions and recommendations.

2. Preliminary Ground Grid Design as per IEEE Standard 80

- a. The switchyard area of the substation will be covered with approximately 4 inches of crushed rocks and other areas will be covered with asphalt.

ATTACHMENT A

A paved driveway will be constructed around the switchyard area to access power equipment. Three major factors that influence substation grounding system design are: Soil Resistivity, Fault Clearing Time and Ground Fault Current. This task shall include the following:

- i. Conduct line-to-ground short circuit calculation separately with - the PG&E Lockeford Substation (East Power Source), the 230kV NCPA Substation (West Power Source), and the combination of both power sources;
 - ii. Prepare three-dimensional ground grid design;
 - iii. Calculate relevant ground grid factors (Reflection, Decrement, Surface Layer Derating, etc.), Ground System Resistance, step, touch and absolute potentials inside and outside ground grid; and,
 - iv. Prepare three-dimensional potential plots (step, touch & absolute), color-coded contour plots, conductor segments and graphical display of over-limit voltages.
- b. Ground grid design, calculation and plots shall be in accordance with IEEE 80 & 665, and the Finite Element Method; and,
- c. Prepare a comprehensive list of materials and cost estimate.

3. Ground Potential Rise Study

- a. Calculate and analyze the ground potential rise (GPR) applying results, design and data from Items 1.a. and 2 above;
- b. Determine the zone of influence of the calculated GPR; and,
- c. Prepare three-dimensional potential plots, color-coded contour plots and graphical display of over-limit voltages.

4. Preparation of Preliminary Substation Layout, Design Criteria and Cost/Benefit Analysis

- a. Evaluate various substation layouts like: Double-Bus
 - i. Double-Bus, Double-Breaker for the 60kV, Main & Transfer Bus for the 12kV, outdoor-low profile configuration;
 - ii. Ring Bus for the 60kV, Main & Transfer Bus for the 12kV, outdoor-low profile configuration;
 - iii. Radial Bus for the 60kV, Radial Bus for the 12kV, outdoor-low profile configuration;
 - iv. Outdoor for the 60kV low profile, Indoor Switchgear for the 12kV configuration;
 - v. Application of Gas-Insulated System (GIS) for the substation;
 - vi. Ring Bus for 60kV, Radial Bus for 12kV, outdoor-low profile configuration; and,
 - vii. Any combination of the above configurations.

ATTACHMENT A

- b. Prepare design criteria and cost/benefit analysis of the first two (2) alternatives of the recommended substation layout; and,
- c. Prepare a comprehensive bill of materials, project task list & schedule, and cost estimate.

5. Engineering & Design of Perimeter Block Wall Fence and Landscape

- a. The substation facility will be constructed two feet (2 ft) below existing grade. A block wall fence and landscape will be built around the perimeter of the facility. Perimeter fencing shall be ten feet (10 ft) high from the existing grade. Plans and specifications will be used to advertise for bids and construction. Services for this task shall include the following:
 - i. Engineer, design and prepare complete plans, drawings and specifications for the construction of perimeter block wall fence;
 - ii. Design and specify a 20-foot wide sliding gate in the south wall that is electrically-operated with key operator pedestal mounted inside and outside, loop detection to prevent gate from closing on a vehicle, and gate shall be solid;
 - iii. Design a recessed area on block wall south side for station name;
 - iv. Design and specify a 42-inch wide personnel gate in the south wall;
 - v. Specify graffiti coating on the exterior of the perimeter block wall;
 - vi. Design and specify a 20-foot wide manual swinging gate in the south wall for access to the Public Works Well 28 area; and,
 - vii. Design and specify a 10-foot high wire mesh (chain link) fence with slats to separate Well 28 area from the electric utility area.
- b. Design and specify complete landscaping around the substation facility with automatic irrigation system in accordance with the requirements of City of Lodi; and,
- c. Prepare a comprehensive bill of materials, project task list & schedule, and cost estimate separately for the block wall and landscaping.

All tasks as identified in this scope of work shall be completed within six (6) months from the date of issuance of Notice to Proceed.



CITY OF LODI

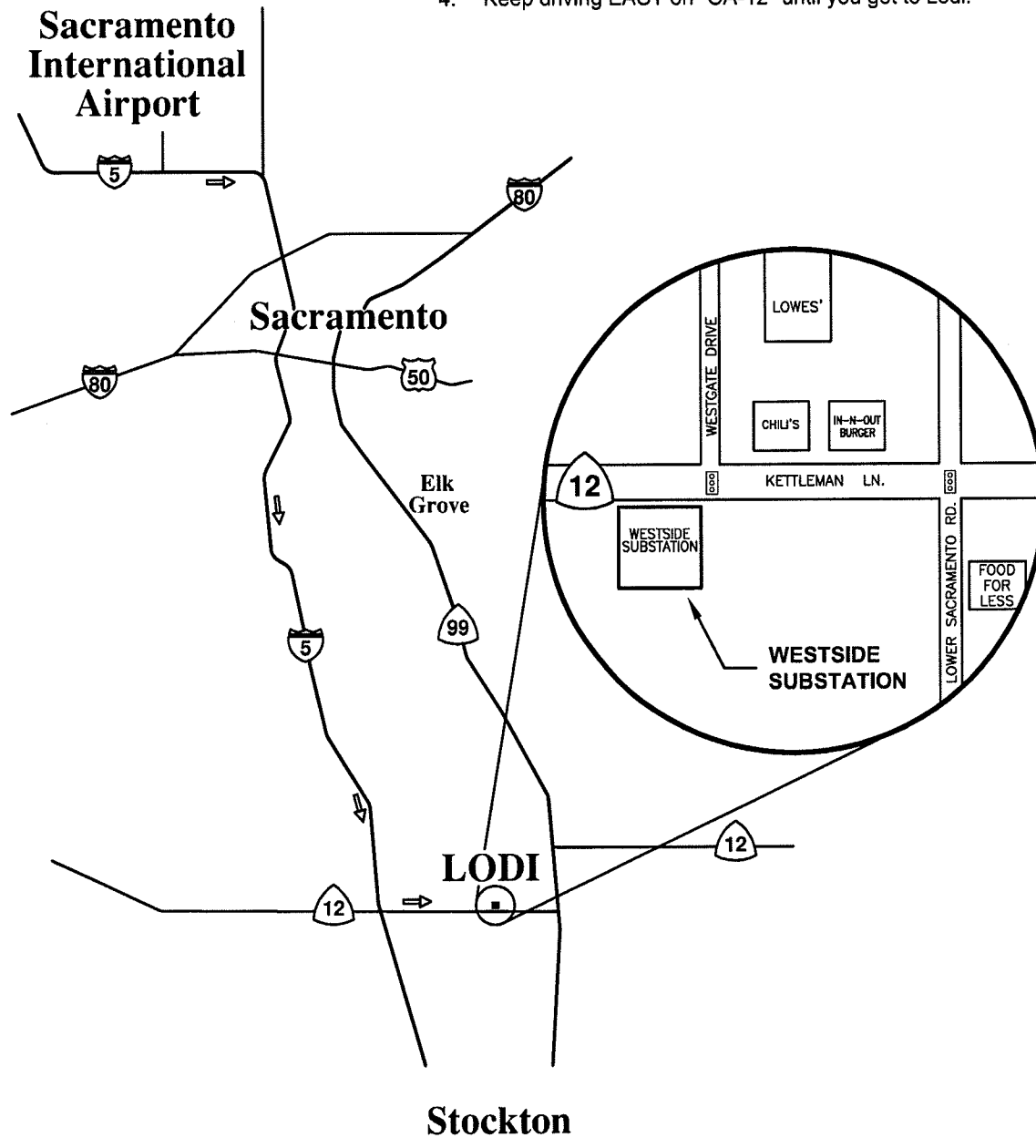
ELECTRIC UTILITY DEPARTMENT

EXHIBIT 1 PROJECT SITE

DIRECTIONS

Coming From The Sacramento Int. Airport To The City of Lodi, Ca.

1. Take freeway "I-5" SOUTH towards Sacramento.
2. Keep driving SOUTH on "I-5" until you get to "CA-12".
3. Turn LEFT onto "CA-12" EAST towards Lodi.
4. Keep driving EAST on "CA-12" until you get to Lodi.





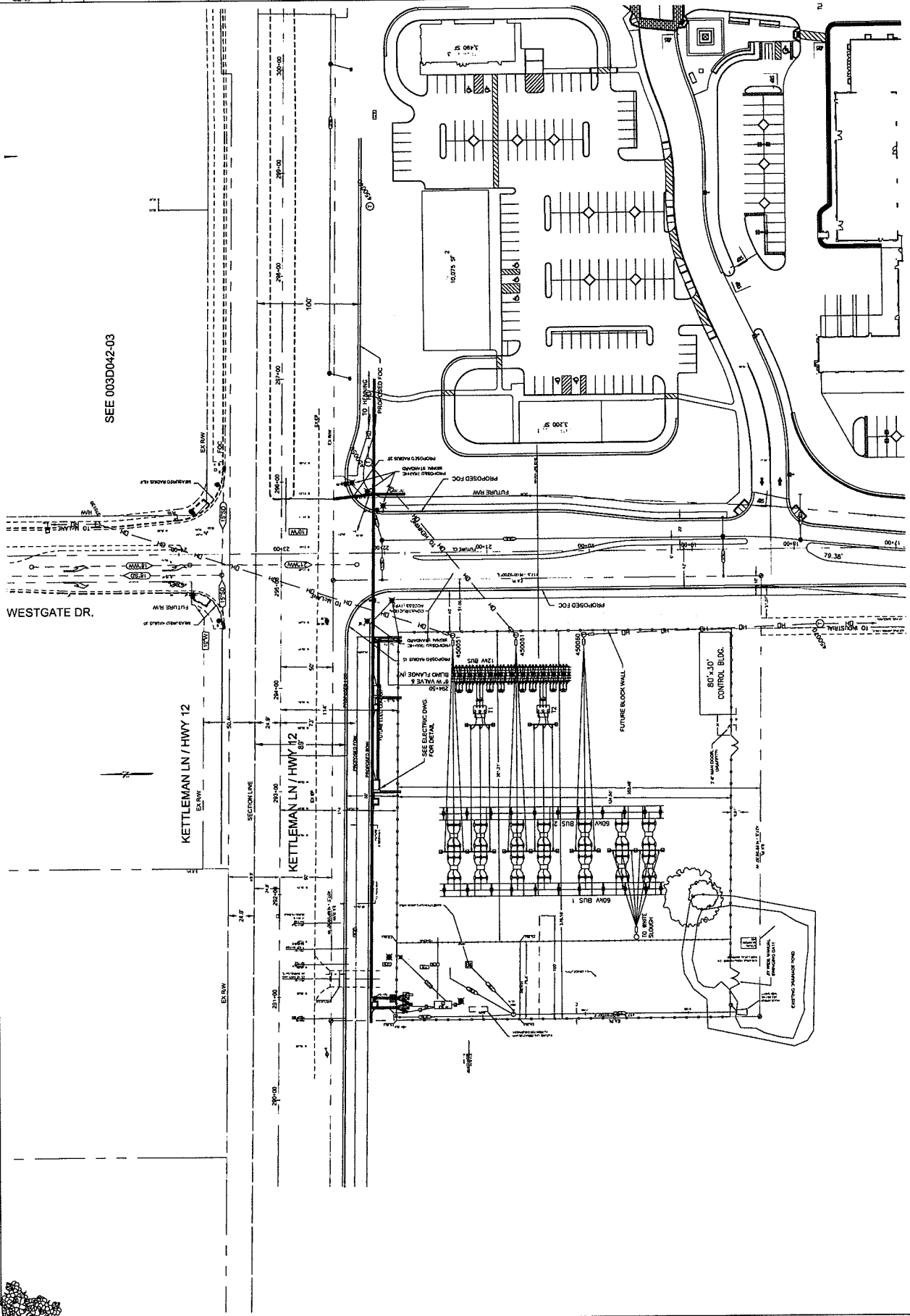
NO.	REVISION	DATE	BY
0		12	
1			

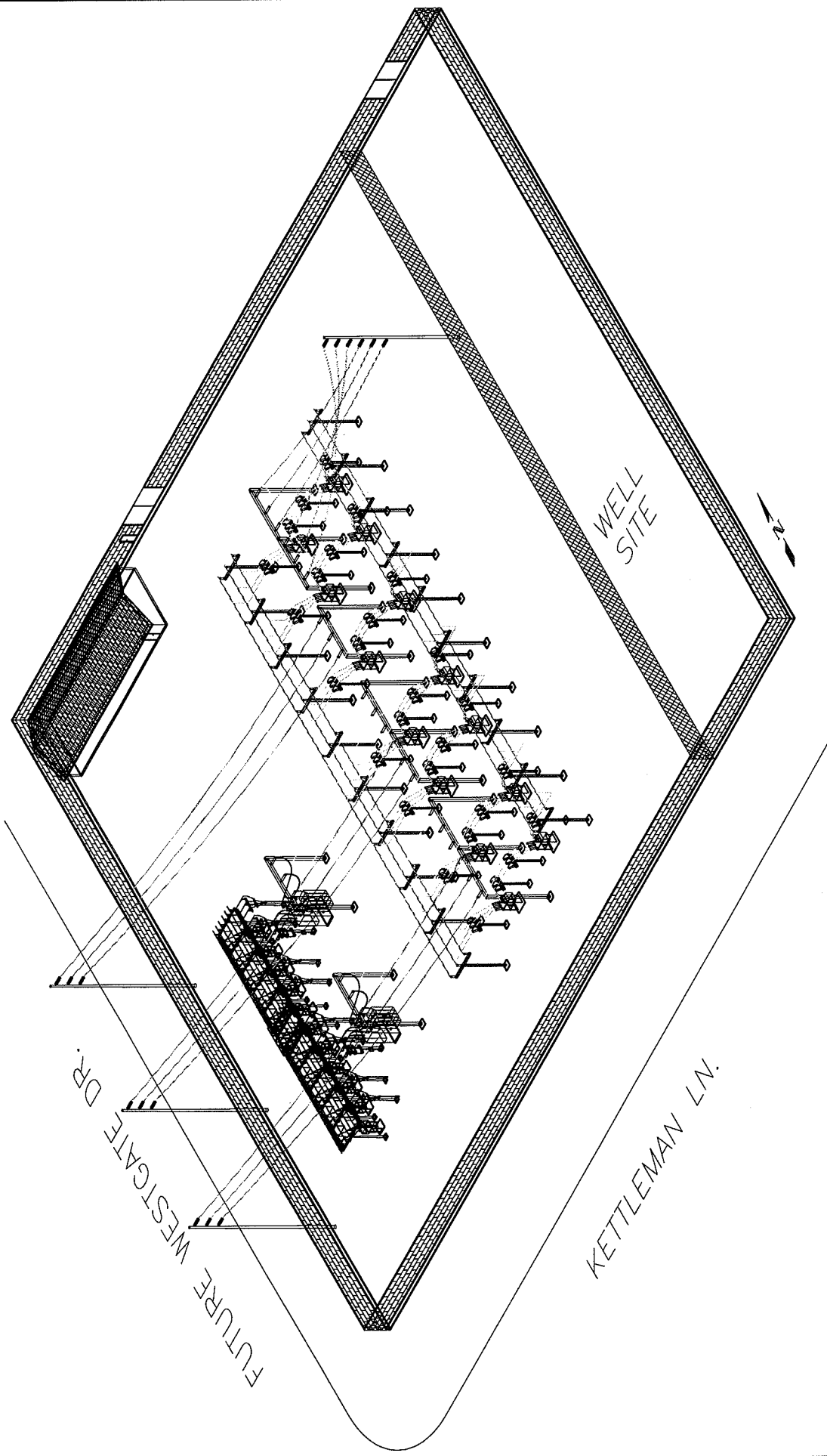
DATE	12
BY	
CHECKED	
DESIGNED	
DRAWN	
SCALE	
PROJECT	
LOCATION	
OWNER	
ENGINEER	
DATE	



CITY OF LODI
PUBLIC WORKS DEPARTMENT
201 WEST PINE STREET
LODI, CALIFORNIA 93260
PHONE: (209) 335-1111
FAX: (209) 335-1110
WWW.CITYOFLODI.CA.GOV

EXHIBIT 2 WESTSIDE SUBSTATION LAYOUT





		CITY OF LODI ELECTRIC UTILITY DEPARTMENT		APPROVED BY: _____ AS BUILT		TITLE: EXHIBIT 3 WESTSIDE SUBSTATION ISOMETRIC		W.D. _____ GRID 40 SCALE NTS DMC No. _____ SHEET 1 of 1	
DATE	5-10-10	DESIGNED	DS	DRAWN	RT	CHECKED	AS BUILT		

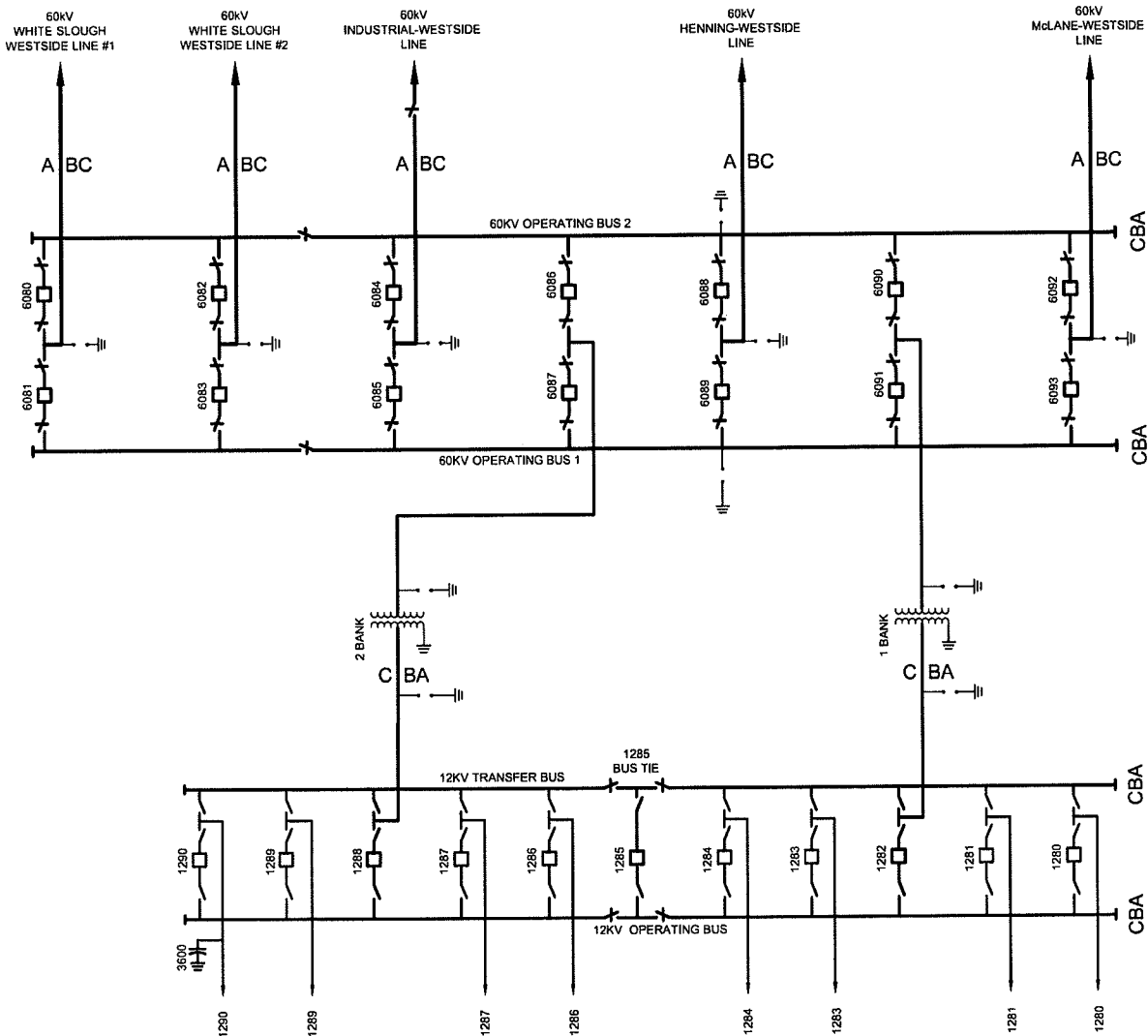


CITY OF LODI

ELECTRIC UTILITY DEPARTMENT

EXHIBIT 4

ONE LINE DIAGRAM



WESTSIDE SUBSTATION
2800 WEST KETTLEMAN LANE

NOTE:

* ALL BANK TRANSFORMERS ARE
18.75/25/31.25 MVA.

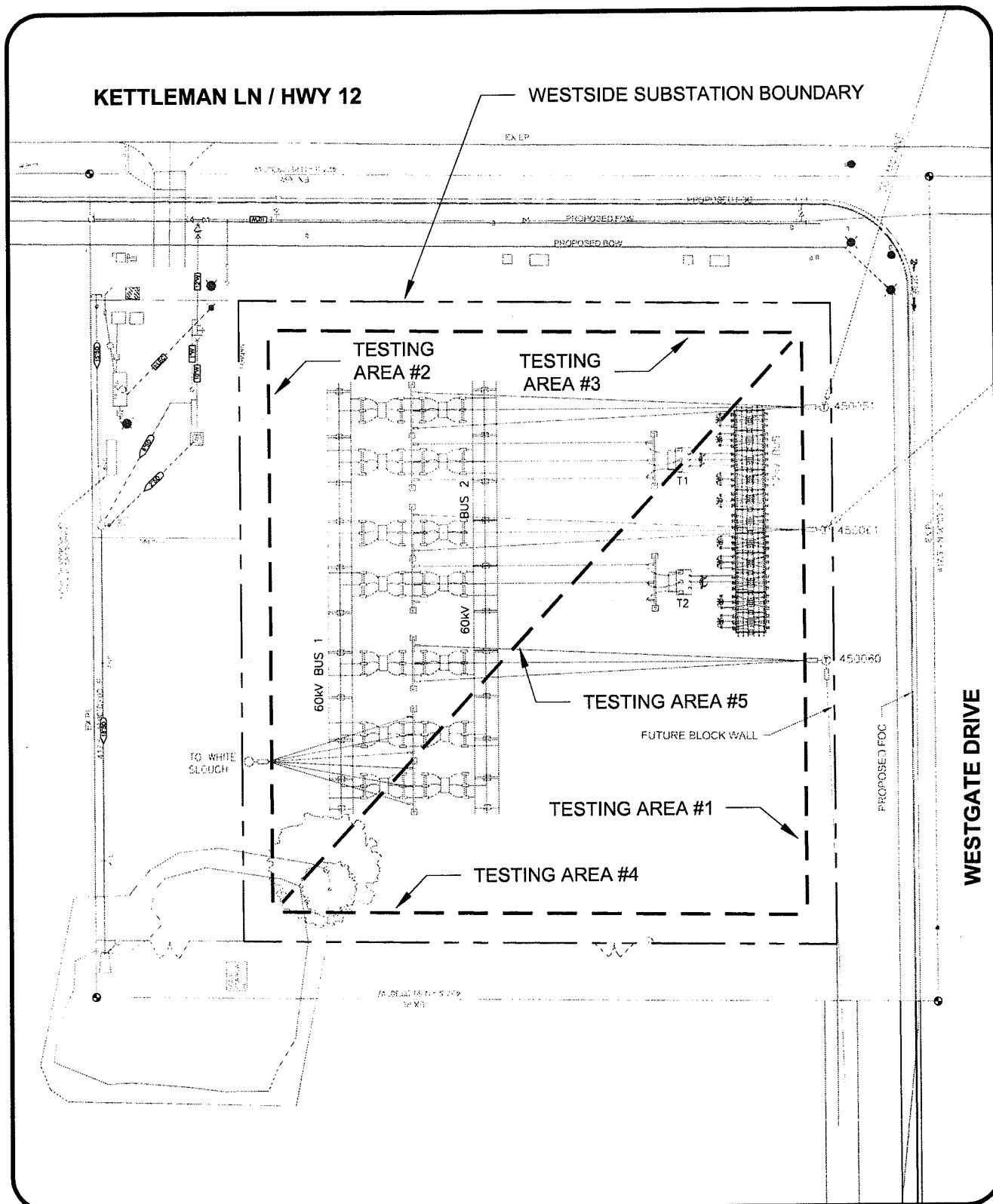


CITY OF LODI

ELECTRIC UTILITY DEPARTMENT

FIGURE 1

SOIL RESISTIVITY TESTING LAYOUT



FEE PROPOSAL

ATTACHMENT B

Task Description	Amount	Labor Sub-totals	Other Direct Costs	Totals
Task 0 – Project Kick-off	\$ 8,625	\$ 8,625	\$ 1,500	\$ 10,125
Task # 1 Soil Resistivity Test and Geotechnical Study				
Site Reconnaissance, Boring Mark out, Mobilization and Permitting	\$ 4,200		\$ 625	
Task #1a Soil Resistivity Test	\$ 9,100		\$ 1,500	
Task #1b Geotechnical Study				
Field Exploration	\$ 4,200		\$ 1,500	1
Laboratory Testing	\$ 2,425		\$ 500	
Engineering Report	\$ 3,910		\$ 500	
Task # 1 Total		\$ 23,835	\$ 4,625	\$ 28,460
Task #2 Ground Grid Design				
Task 2a, line items: I, II, III, IV	\$ 14,250		\$ 3,700	2
Task 2b, Prepare List of Materials and Cost Estimate	\$ 4,750		\$ 500	
Task # 2 Total		\$ 19,000	\$ 4,200	\$ 23,200
Task # 3 Ground Potential Rise Study				
Task # 3a Calculate GPR	\$ 7,575		\$ 350	
Task #3b Determine Zone of Influence	\$ 1,680		\$ 100	
Task # 3c prepare 3-D Potential Plots and over limit voltages	\$ 2,760		\$ 100	
Task # 3 Total		\$ 12,015	\$ 550	\$ 12,565
Task # 4 Preparation of Preliminary Substation Layout, Design Criteria and Cost/Benefit Analysis				
Task # 4a Evaluate various substation layouts	\$ 25,600		\$ 500	
Task # 4b Prepare Design Criteria and Cost/Benefit Analysis	\$ 12,500		\$ 250	
Task # 4c Prepare Bill of Materials, Project Task List and Schedule and Cost Estimates	\$ 9,500		\$ 400	
Task # 4 Total		\$ 47,600	\$ 1,150	\$ 48,750
Task # 5 Engineering & Design of Perimeter Block Wall, Fence and Landscape				
Task # 5a Engineering and Designs Including Line items I, II, III, IV, V, VI, VII	\$ 3,500		\$ 1,000	
Task # 5b Topo Map, Grading Study, Excavation Study	\$ 7,360		\$ 200	
Task # 5b Landscape Design	\$ 5,200		\$ 500	
Task # 5c Prepare Bill of Materials, Project Task List, Schedule, and Cost Estimate	\$ 5,750		\$ 500	
Task # 5 Total		\$ 21,810	\$ 2,200	\$ 24,010
Total Tasks 0 - 5				\$ 147,110

Total Project Cost: \$147,110

- 1 Includes Permitting, Hiring of Drill Rig and Filling of Holes with Grout
- 2 Includes License for ETAP Software

Hourly Rates for Personnel

Team Member & Position	Hourly Rate
Parkash Daryani, Principal-in-Charge	\$175.00
Krishna Shah, P.E., Project Manager	150.00
Ashish Sengupta, P.E. Principal Electrical Engineer	150.00
Dilip Shah Substation Transformer Specialist	135.00
Athar Taha E.I.T., Project Engineer	115.00
Bansi Tikku P.E. QA/QC	150.00
Gregory Farrand PG. C.E.G. Principal Geologist	155.00
Peter Connolly P.E. G.E. Geotechnical Engineer	150.00
Dustin Rath, P.E. Project Geologist	140.00
Steve Pechin, P.E. Civil Engineer Task Leader	152.00
Joshua Elson, P.E. Civil Engineer	126.00
Justin Ware L.A. Landscape Architect	150.00
Pompilu Diacu GPR Specialist	150.00

ATTACHMENT C

INSURANCE REQUIREMENTS

5-409 Responsibility for Damage The City of Lodi, its elected and appointed boards, commissions, officers, agents and employees shall not accept responsibility for any loss or damages that occur during the scope of work to the work or any part thereof; or for any material or equipment used in performing the work; or for injury or damage to any person or persons, either work personnel or the public; for damage to adjoining property arising from or related to Contractor's negligence or willful misconduct during the progress of the work or any time before final acceptance. The Contractor shall indemnify and save harmless the City of Lodi, its elected and appointed boards, commissions, officers, agents and employees from any suits, claims or actions brought by any person or persons for or on account of any injuries or damages sustained or arising out of Contractor's negligent acts, errors or omissions in the performance of the work or in consequence thereof. The City of Lodi may retain as much of the money due the Contractor as shall be considered necessary in City's sole judgment until disposition has been made of such suits or claims for damages as aforesaid.

5-413 Insurance Requirements for Contractor The Contractor shall provide proof of insurance to be maintained during the life of this contract as listed under General Liability and Automobile Liability coverage listed below. These insurance policies shall protect the Contractor and any subcontractor performing work covered by this contract from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from Contractor's operations under this contract, whether such operations be by Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amount of such insurance shall be as follows:

1. COMMERCIAL GENERAL LIABILITY 2. COMPREHENSIVE AUTOMOBILE LIABILITY

Per Occurrence
\$3,000,000 Property Damage

\$1,000,000 Combined Single Limits

Personal & Adv Injury
\$6,000,000 General Aggregate

NOTE: Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section§ 810 et seq.).

A copy of the certificate of insurance with the following endorsements shall be furnished to the City of Lodi:

(a) Additional Named Insured Endorsement with Primary Wording

Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents, Employees, and Volunteers as additional named insured, insofar as work performed by the insured under written contract with the City of Lodi.

(This endorsement shall be on a form furnished to the City of Lodi and shall be included with Contractor's policies.)

ATTACHMENT C

Wording: Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its Officers Agents, Employees, and Volunteers shall be excess only and not contributing with the insurance afforded by this endorsement.

(c) Severability of Interest Clause

The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.

(d) Notice of Cancellation or Change in Coverage Endorsement

This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the City Attorney, City of Lodi, P.O. Box 3006, Lodi, CA 95241.

(e) Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

"Claims made" coverage requiring the insureds to give notice of any potential liability during a time period shorter than that found in the Tort Claims Act shall be unacceptable.

5-414 Workers' Compensation Insurance The Contractor shall provide proof of and maintain during the life of this contract, Worker's Compensation Insurance for all Contractor's employees employed at the site of the project and, if any work is Subcontracted, Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the City Attorney, City of Lodi, P.O. Box 3006, Lodi, CA 95241.

RESOLUTION NO. 2010-_____

A RESOLUTION AUTHORIZING THE CITY MANAGER TO
ENTER INTO A PROFESSIONAL SERVICES AGREEMENT FOR
PRELIMINARY ENGINEERING OF WESTSIDE SUBSTATION

=====

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed bids were received and publicly opened on July 14, 2010 at 11:00 a.m., for the City Council approved the specifications and authorized the advertisement for bids to perform preliminary engineering on Westside Substation on October 21, 2010;

WHEREAS, said bids have been compared, checked, and tabulated and a report thereof filed with the City Manager as follows:

Pike Electric, Inc. of San Ramon, CA	\$ 87,500.00*
SANTEC Consulting Services Inc. of Sacramento, CA	\$124,000.00*
IEC Corporation of Folsom, CA	\$138,124.00*
Auriga Corporation of Milpitas, CA	\$147,110.00
R.W. Beck, Inc. of Seattle, WA	\$247,990.00
Electric Power System, Inc. of Fresno, CA	No Bid Cost*

***Note: Proposals were not responsive with omissions of required materials.**

WHEREAS, staff found that only the proposals of RW Beck, Inc. (RW Beck) and Auriga Corporation (Auriga) are fully compliant with the requirements of the Westside Substation Preliminary Engineering Request for Proposal; and

WHEREAS, the cost proposal of RW Beck is 42% over the budget and Auriga is 19% below the \$175,000 budget for this Project.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby authorizes the City Manager to enter into a Professional Services Agreement for Preliminary Engineering of Westside Substation with Auriga Corporation at a cost not to exceed \$147,110.

Dated: September 1, 2010

=====

I hereby certify that Resolution No. 2010-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held September 1, 2010, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Approving the Master Lease Agreement with the Lodi Grape Festival and National Wine Show Association for Use of Various Festival Ground Facilities (\$21,000) (PR)

MEETING DATE: September 1, 2010

PREPARED BY: Interim Parks and Recreation Director

RECOMMENDED ACTION: Adopt resolution approving the master lease agreement with the Lodi Grape Festival and National Wine Show Association for use of various festival ground facilities for amount not to exceed \$21,000.

BACKGROUND INFORMATION: The Parks and Recreation Department has leased facilities from the Lodi Grape Festival and National Wine Show Association for more than 40 years for various indoor and outdoor programs. The proposed agreement includes use of the Grape Pavilion, Cabernet Hall, and an area known as the soccer field. Management of the Lodi Grape Festival has also been quick to accommodate the City's needs when other space and/or facilities are required.

The term of the agreement is one year, commencing on July 1, 2010 and ending June 30, 2011. The terms and conditions are consistent with those of the previous agreement. The annual lease payment is \$21,000.

Staff recommends approving the use agreement, which provides facilities for youth and adult basketball, soccer, and other miscellaneous programming. There are no suitable alternative sites. The City Attorney has approved the agreement as to form.

FISCAL IMPACT: \$21,000 from the Recreation Fund, the majority of which is generated from user fees.

FUNDING AVAILABLE: Account #346011.7321 – 2010/11 Recreation Administration Operating Budget

Jordan Ayers, Deputy City Manager

James M. Rodems
Interim Parks and Recreation Director

cc: City Attorney

APPROVED: _____
Konradt Bartlam, Interim City Manager

INTERIM USE RENTAL AGREEMENT LODI GRAPE FESTIVAL AND NATIONAL WINE SHOW FACILITIES

THIS AGREEMENT made this 30th of June, 2010, at Lodi, County of San Joaquin, State of California, by and between the **LODI GRAPE FESTIVAL AND NATIONAL WINE SHOW, INC.**, a non-profit corporation, hereinafter called the Festival, and **CITY OF LODI** hereinafter called the Renter.

RECEIVED

WITNESSETH:

1. Permission is hereby granted to the Renter to use the following described property of the Festival for a period beginning **JULY 1, 2010** and ending **JUNE 30, 2011** upon the conditions, agreements and terms hereinafter set out in this agreement and in attached Exhibit A.

2. The description of the premises of the Festival, located in Lodi, County of San Joaquin, State of California, permitted to be used is described as: **CABERNET HALL, THE EAST FIELD AND THE GRAPE PAVILION.**

3. Renter hereby agrees to pay the Festival for the use of said premises as follows: **\$21,000.00 (TWENTY ONE THOUSAND DOLLARS) FOR RENTAL OF FACILITIES AS OUTLINED IN ATTACHED EXHIBIT A.** Payable as follows: **\$21,000.00 (TWENTY ONE THOUSAND DOLLARS) AND RETURN OF SIGNED CONTRACT DUE ON OR BEFORE JULY 1, 2010.**

SEE EXHIBIT "A" ATTACHED, THE CONTENTS OF WHICH ARE MADE A PART OF THIS AGREEMENT BY REFERENCE AS THOUGH FULLY INCORPORATED HEREIN.

4. Said premises shall be used for **PARKS AND RECREATION PROGRAMS** and for no other purpose without the written consent of the Festival first had and obtained. Renter agrees to comply with all ordinances, statutes, rules and regulations applicable to the conduct or operation of the activities of Renter herein permitted to be conducted. Renter shall provide adequate security to maintain order in and about the premises permitted to be used herein or to which necessary or expedient access has been granted at all times during the use of the premises herein permitted to the Renter. Renter shall not permit a breach of the peace or any unlawful act or omission by any person.

5. Renter agrees to maintain the premises herein permitted to be used and other portions of the premises of the Festival to which it, its employees, agents, licensees or any member of the public has access to by reason of this agreement in good condition, reasonable wear and tear, damage by the elements, act of God, or casualties beyond the control of Renter only excepted and Renter agrees to return said premises in the same condition as the premises were before use of the same was permitted hereunder, ordinary wear and tear, damage by the elements, acts of God, or casualties beyond the control of the Renter excepted. The Festival shall have the privilege of inspecting the premises covered by this agreement at any or all times.

6. Renter shall provide Festival with an original certificate of liability insurance with original signature, naming the **LODI GRAPE FESTIVAL AND NATIONAL WINE SHOW, INC., the COUNTY OF SAN JOAQUIN, the STATE OF CALIFORNIA, their AGENTS, DIRECTORS, OFFICERS, SERVANTS AND EMPLOYEES** as additional insured insofar as the operations under this agreement are concerned. The amounts of public liability coverage shall not be less than **\$1,000,000.00/\$1,000,000.00** and the amount of property damage coverage shall not be less than **\$1,000,000.00**, neither coverage to involve a deductible feature. Said certificates shall contain a statement by the insurance company that it will not cancel said policy or policies without giving 30 days prior written notice to the Festival.

7. This agreement shall not be assigned in whole or in part nor may any right hereunder granted to Renter be granted in turn to any person without the written consent of the Festival first had and obtained.

Initials: _____
Lodi Grape Festival

Initials: _____
City of Lodi, Schwabauer

Initials: _____
City of Lodi, Rodems

Initials: _____
City of Lodi, Johl

Initials: _____
City of Lodi, Bartlam

8. The Festival may terminate this agreement and be relieved of any further performance if Renter fails to perform any covenant herein contained at the time and in the manner herein provided, which said right shall be cumulative to any other legal right or remedy. Notwithstanding anything herein contained to the contrary, this agreement may be terminated and the provisions of this agreement may be altered, changed or amended, by mutual consent of the parties hereto.

9. The parties hereto agree that the Renter in the performance of this agreement shall be an independent contractor and shall not be an employee of the Festival.

10. Time is of the essence of each and all the provisions of this agreement and the provisions of this agreement shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties hereto.

11. It is mutually understood and agreed that no alteration or variation of the terms of this agreement shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreements not incorporated herein, and no alterations or variations of the terms hereof unless made in writing between the parties hereto shall be binding on any of the parties hereto.

12. All safety orders of the Division of Industrial Safety, Department of Industrial Relations, must be strictly observed.

13. NOTICE, Pursuant to Sec. 107.6 Calif. Rev. & Tax Code. Renter recognizes and understands that this tenancy may create a possessory interest subject to property taxation and that the renter may be subject to the payment of property taxes levied on such interest.

14. Additional provisions, if any, and/or alterations to existing provisions contained herein, shall be attached to this agreement and marked "**EXHIBIT A**". Such attached sheets when properly signed by both parties become a part of this agreement and shall be binding upon the parties hereto.

IN WITNESS WHEREOF, this agreement has been executed in duplicate by and on behalf of the parties hereto, the day and year first above written.

**LODI GRAPE FESTIVAL
NATIONAL WINE SHOW, INC.**
P.O. BOX 848 ~ 413 E. LOCKEFORD ST.
LODI, CA 95241
(209) 369-2771

CITY OF LODI, a municipal corporation
125 N. STOCKTON ST.
LODI, CA 95240
(209) 333-6800

BY: _____
MARK A. ARMSTRONG
GENERAL MANAGER

BY: _____
JIM RODEMS
DIRECTOR, PARKS & RECREATION

BY: _____
KONRADT "RAD" BARTLAM
INTERIM CITY MANAGER

APPROVE AS TO FORM:

ATTEST:

BY: _____
D. STEPHEN SCHWABAUER
CITY ATTORNEY

BY: _____
RANDI JOHL
CITY CLERK



EXHIBIT "A"

1. Festival does hereby lease to Renter Cabernet Hall, the Grape Pavilion and the East Field for programs sponsored by and conducted under the supervision of the City of Lodi Parks and Recreation Department on the Lodi Grape Festival grounds situated in the City of Lodi, County of San Joaquin, State of California. Festival grants Renter the nonexclusive right to utilize necessary parking lot space and access routes to the buildings which are necessary to conduct its recreation program.

2. Renter's use is limited to the following:

GRAPE PAVILION:

Grape Pavilion shall be reserved for Renter's use approximately October 4, 2010 through March 15, 2011 unless other dates are established by mutual written agreement prior to October 1, 2010. The hours Renter may use the Pavilion shall be:

Monday through Friday	5 p.m. to 11 p.m.
Saturday	7 a.m. to 1 a.m. Sunday
Sunday	7 a.m. to 11 p.m.

(Renter shall use the weekend schedule on legal holidays falling on weekdays.)

Festival reserves the right to rent Pavilion for basketball practice Monday through Friday until 5 p.m. and Renter shall be pre-empted from the building on the following dates: Wednesday, December 8 through Sunday, December 12, 2010, Friday, January 28 through Sunday, January 30, 2011, and Friday, March 4 through Sunday, March 6, 2011. Late night basketball is permitted on Saturday, January 29, 2011 and Saturday, March 15, 2011 but may not begin until after 9 p.m. In the event Festival schedules use of the Pavilion to another user, that user or the Festival will immediately thereafter provide custodial care and/or maintenance of the Pavilion in order to return it to Renter in satisfactory condition for Renter's continued use.

CABERNET HALL:

Cabernet Hall shall be reserved for Renter's use from October 1, 2010 through August 15, 2011 on Monday through Thursday 4:30 p.m. to 11 p.m. Use of Cabernet Hall is reserved by the Festival on Fridays, Saturdays and Sundays, and on Tuesday, Wednesday and Thursday mornings in the third week of each month for use by San Joaquin County for surplus food distribution. Renter may make request to Festival for special use on these days.

EAST FIELD:

The East Field shall be reserved for Renter's use from October 15, 2010 through April 15, 2011 on Monday through Friday from 4 p.m. to 11 p.m. Festival reserves the right to pre-empt Renter when other events may conflict. Renter will provide no less than one (1) portable restroom for its own use and will provide daily pickup of trash in the East Field area during the lease period. In exchange for use of East Field, Renter will mow field lawn every third week during the winter months (October 15 through April 15), and every week during the summer months (April 16 through October 14).

3. It shall be the responsibility of the Renter to provide sufficient personnel to monitor crowd control, including policing of parking lot areas and grounds adjacent to the buildings to insure no disturbance of other Renters on the Festival grounds. Festival shall have the right to pre-empt usage of any facility when other facility renters will be in the immediate vicinity of the buildings. Festival will notify Renter in advance of these pre-empted dates.

4. Renter shall be diligent in turning out lights, turning off heaters and/or coolers and locking building doors and outside gates daily and nightly after each use. If this provision is not observed, Festival shall bill Renter for use of utilities beyond scheduled hours of use. Renter shall provide Festival with a complete list of personnel who are issued keys to Festival's facilities. Renter shall be billed \$50 (fifty dollars) for each key not returned to Festival at end of lease year.

Initials: _____
Lodi Grape Festival

Initials: _____
City of Lodi, Schwabauer

Initials: _____
City of Lodi, Rodems

Initials: _____
City of Lodi, Johl

Initials: _____
City of Lodi, Bartlam

5. Renter agrees to provide adequate qualified supervision at all times when using any of Festival's facilities. Renter agrees to clean up all areas used, outside and inside, including parking areas, on a daily basis, and all areas of the buildings and grounds are to be kept free of papers, cups, cans, bottles and other debris deposited as a result of Renter's activities. Renter agrees to repair or replace, at its own expense, any and all damage to Festival's buildings, facilities, equipment and/or grounds caused by Renter's activities.

6. It is expressly agreed and understood that this lease is for the use of the Renter for its recreational programs and NO SUBLETTING or assignment of this lease is permitted unless otherwise approved by mutual written agreement. Any programs or activities other than the basketball program shall first be approved by Festival. Renter shall have concession rights for its events only and may operate a concession during all applicable events under this lease specifically granted to Renter. Concession shall comply with all health, fire and safety regulations, including no propane gas cooking inside the buildings.

7. Renter does hereby agree to indemnify, defend and save Festival free and harmless from any and all claims for loss, damage, injury or liability to persons or property that may arise during the time the Renter is using the buildings, facilities and grounds which arise from the acts or omissions of Renter, except for claims for loss, damage, injury or liability to persons or property which arise from the acts of Festival. For such claims the Festival does hereby agree to indemnify, defend and save Renter free and harmless. Renter agrees at all times during the continuance of this lease to maintain adequate public liability and property damage insurance covering it use, occupancy and operation of said premises. Such policy or policies shall carry a specific endorsement providing that the Festival, the County of San Joaquin, the State of California, and their agents, directors, officers, servants and employees are named as additional insureds and that such liability policy or policies are primary insurance as to any similar insurance carried by Festival. Renter shall furnish Festival with satisfactory proof of the carriage of insurance required by Festival, and there shall be a specific contractual liability assumed by Renter pursuant to this lease. Any policy of insurance required of Renter under this lease shall also contain an endorsement providing that at least thirty (30) days notice must be given in writing to Festival of any pending change in the limits of liability or of any cancellation or modification of the policy or policies.

In the event Renter is self-insured, Renter shall provide a certificate of self-insurance in a form satisfactory to Festival.

**LODI GRAPE FESTIVAL AND
NATIONAL WINE SHOW ASSOCIATION, INC.**

**CITY OF LODI, a municipal
corporation**

BY: _____
**MARK A. ARMSTRONG
GENERAL MANAGER**

BY: _____
**JIM RODEMS
DIRECTOR, PARKS & RECREATION**

BY: _____
**KONRADT "RAD" BARLAM
INTERIM CITY MANAGER**

APPROVE AS TO FORM:

ATTEST:

BY: _____
**D. STEPHEN SCHWABAUER
CITY ATTORNEY**

BY: _____
**RANDI JOHL
CITY CLERK**

RESOLUTION NO. 2010-_____

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING THE MASTER LEASE AGREEMENT WITH
THE LODI GRAPE FESTIVAL AND NATIONAL WINE
SHOW ASSOCIATION FOR USE OF VARIOUS FESTIVAL
GROUND FACILITIES FOR THE PERIOD JULY 1, 2010
TO JUNE 30, 2011

=====

WHEREAS, the Parks and Recreation Department has leased facilities from the Lodi Grape Festival and National Wine Show Association for more than 40 years for various indoor and outdoor programs; and

WHEREAS, this agreement allows the City use of the Grape Pavilion, Cabernet Hall, and an outdoor area known as the soccer field; and

WHEREAS, management of the Lodi Grape Festival has also been quick to accommodate our needs when other space and/or facilities are required; and

WHEREAS, the term of the agreement is for one (1) year, commencing on July 1, 2010, and ending June 30, 2011.; and

WHEREAS, the annual lease payment is \$21,000; and

WHEREAS, staff therefore recommends that the City Council approve the use agreement, which provides facilities for youth and adult basketball, soccer, and other miscellaneous programming.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the Master Lease Agreement with the Lodi Grape Festival and National Wine Show Association, for use of the Grape Pavilion, Cabernet Hall, and the soccer field for the period July 1, 2010, to June 30, 2011.

Dated: September 1, 2010

=====

I hereby certify that Resolution No. 2010-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held September 1, 2010, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing the City Manager to Extend Use of CALNET2 Contract for Selected Telecommunication Services

MEETING DATE: September 1, 2010

PREPARED BY: Information Systems Manager

RECOMMENDED ACTION: Adopt resolution authorizing the City Manager to extend use of CALNET2 contract for selected telecommunication services.

BACKGROUND INFORMATION: The City buys certain technology products, such as telephone services, at discounted rates through the State of California contract called CALNET2.

CALNET2 is a competitively-bid contract that offers State and non-state agencies a comprehensive array of telecommunications services throughout the State of California. Awarded on January 3, 2007. CALNET2 is a five-year contract and contains an option for two one-year extensions.

On September 17, 2008, the City Council authorized the City Manager to sign the CALNET2 Agreement and gave approval for purchase of the following services under the agreement through December 2010:

- Business Access Lines
- Central Office Trunk Services
- Data Transmission Services
- ISDN (BRI)
- ISDN (PRI)
- Frame Relay and ATM
- Internet

To date, the City has obtained all of the above services, except Internet services, through the CALNET2 contract.

Staff recommends that the City Manager be authorized to continue using the CALNET2 contract until it is terminated for the above listed services.

FISCAL IMPACT: Extend savings on various technology services that are purchased.

FUNDING: Citywide Telephone Account (100242.7202)

Jordan Ayers
Deputy City Manager/Internal Services Director

Prepared by: Steve Mann, Information Systems Manager

APPROVED: _____
Konradt Bartlam, Interim City Manager

California Integrated Information Network (CALNET) II**APPENDIX B-1, MODEL CONTRACT LANGUAGE****Table of Contents, Module 1**

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* STD Form 65 is only provided as separate Adobe PDF file.

CALIFORNIA INTEGRATED INFORMATION NETWORK (CALNET) II**ATTACHMENT 1 - GENERAL PROVISIONS, MODULE 1**

These California Integrated Information Network (CALNET) II ("CALNET II") General Provisions are part of the Contract entered into effective as of the Effective Date by and between the State of California, through its Department of Technology Services, Office of Network Services, and _____ SBC Global Services, Inc. dba AT&T Global Services, a _____ Delaware _____ corporation having a principal place of business at _____ One AT&T Plaza, Dallas, TX 75202 _____.

1. PURPOSE OF CONTRACT

Pursuant to the RFP, the State may issue one or more contracts for different categories of CALNET II Services (each category, a category of "**Module Services**"). Presently, the State anticipates that there shall be four categories of Module Services:

- Module 1 Services: Core Services (defined and described in Sections 4.4.1 and 6.1 of the RFP)
- Module 2 Services: Long Distance Services for Voice (defined and described in Sections 4.4.2 and 6.2 of the RFP)
- Module 3 Services: Internet Protocol Services (defined and described in Sections 4.4.3 and 6.3 of the RFP)
- Module 4 Services: Broadband Fixed Wireless Access (defined and described in Sections 4.4.4 and 6.4 of the RFP)

Pursuant to this Contract, Contractor shall provide to the State and Agencies the Module 1 Services as defined and described in this Contract (such Module 1 Services deemed "**Services**" for purposes of this Contract). Unless otherwise specified in this Contract, the Services shall be available twenty-four (24) hours a day, seven (7) days a week, as further described in this Contract.

Capitalized terms not defined herein or in the Glossary (Appendix A) shall be given the meaning, if any, ascribed to them in the other portions of the RFP.

2. CONTACT INFORMATION

- a. The Contract Representatives during the Term shall be:

State Agency: Department of Technology Services, Office of Network Services	Contractor: Pacific Bell Telephone Company dba AT&T California
Name: Robert T. Rainbolt	Name: Joseph F. Foster
Phone: (916) 657-6169	Phone: 916-557-4477
Fax: (916) 657-9129	Fax: 916-442-7915
E-Mail: tom.rainbolt@dts.ca.gov	E-Mail: jf2716@att.com

Direct all inquiries to:

State Agency: Department of Technology Services	Contractor: Pacific Bell Telephone Company dba AT&T California
Section/Unit: Office of Network Services	Section/Unit: N/A
Attention: ONS Contract Management Section	Attention: Joseph F. Foster
Address: P.O. Box 1810, MS 304, Rancho Cordova, CA 95741-1810	Address: 610 Sequoia Pacific Blvd. Sacramento, CA 95814-0230
Phone: (916) 657-6169	Phone: 916-557-4477
Fax: (916) 657-9129	Fax: 916-442-7915

Subject to the terms of the Contract, each Party may modify the Contract Representatives listed above during the Term by providing written notice to the other Party identifying the new Contract Representative(s).

- b. Contractor shall act as the single point of contact and responsible party for all Services offered under this Contract. This includes all elements of service; ordering; provisioning; maintenance; and trouble reporting. Contractor will also act as the single point of contact in coordinating all entities required in the Contract to meet the State's need for service. Contractor shall act as the single point of contact and responsible party for Services obtained from its subcontractors and affiliates that are offered to the State or any authorized user of this Contract as further described in the RFP.
- c. Whenever any notice or demand is to be given under this Contract to Contractor or the State, the notice shall be in writing and addressed to the applicable party at the address described in Section 2.a above, or such subsequent address of a party provided to the other party via a written notice in

accordance with this paragraph. Notices delivered by overnight courier service shall be deemed delivered on the day following mailing. Notices mailed by U.S. Mail, postage prepaid, registered or certified with return receipt requested, shall be deemed delivered five (5) calendar days after mailing. Notices delivered by any other method shall be deemed given upon confirmed receipt.

- d. The State and Agencies may order Deliverables and Services under this Contract by issuing the appropriate order form described in Attachment 5 to this Contract, or such other form as may be approved by the State ("**Ordering Documents**").

3. COMPLETE INTEGRATION

This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior, contemporaneous, different, or additional agreements pertaining to the subject matter of the Contract. Sections 1, 3, 4, 5, 6 and 7 of the RFP, the Proposal, the Table of Contents (which is included in Appendix B to the RFP), and the Glossary (which is Appendix A to the RFP) are each incorporated herein by this reference.

4. SEVERABILITY

Contractor and the State agree that if any term or provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

5. INDEPENDENT CONTRACTOR

Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State. Contractor, not the State, has the right, power, authority and duty to supervise and direct the activities of the agents and employees of Contractor and to compensate such agents and employees for any work performed by them on the behalf of the State pursuant to this Contract. Contractor, and not the State, shall be responsible and therefore solely liable for all acts and omissions of the agents and employees of Contractor.

6. APPLICABLE LAW

This Contract and performance under it shall be governed by and interpreted in accordance with the applicable laws of the State of California, including applicable state and federal statutes such as the Communications Act of 1934, as amended, (including but not limited to the Telecommunications Act of 1996 and subsequent Acts) and the Public Utility Code as interpreted and applied, as well as regulatory rules, regulations and decisions by the California Public Utilities Commission ("CPUC") and the Federal Communications Commission, without giving effect to the principles thereof relating to conflicts of laws. To the extent Services in this Contract are subject to the jurisdiction of the CPUC, the Services and this Contract will be subject to modification from time to time as the CPUC may so order in the exercise of their lawful jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract. Each party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of this Contract must be brought solely and exclusively in Sacramento, California, and each party irrevocably submits to the sole and exclusive jurisdiction of the courts in Sacramento County, Sacramento California, in personam, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other party.

Contractor, in conducting its business as required by this Contract (including the RFP) and agreed to in the Proposal, shall comply with the Communications Act of 1934, as amended (including, but not limited to, the Telecommunications Act of 1996 and subsequent Acts), and as interpreted and applied by the applicable regulatory authorities and courts.

7. COMPLIANCE WITH STATUTES AND REGULATIONS

- a. Contractor represents, warrants and certifies that in the performance of this Contract, it will comply with all applicable laws, statutes, rules, regulations and orders of the United States and the State of California.
- b. In the event that any term or action required in this Contract requires a regulatory filing, Contractor shall make such filing and such action and/or term shall, to the extent applicable, be made effective pursuant to the rules of the FCC and the CPUC. To the extent applicable, Contractor shall make the appropriate FCC filing in a timely manner with the rates being effective consistent with FCC requirements. Under the CPUC, terms are effective immediately upon signature by the parties; provided, however, that, to the extent applicable, Contractor is obligated to and shall make a formal filing with the CPUC in a timely manner and shall provide the State with written notice that such filing has been made.
- c. In addition to the foregoing, Contractor shall, after execution of this Contract, make all necessary regulatory filings which shall include the rates and charges for Service and any terms and conditions that affect the rates and charges paid by any Customer.
- d. Should the filings described herein not adequately address an issue or fail to address an essential fact, Contractor's tariffs or published service guides (or other published corporate pricing if Contractor is not required to file tariffs), if applicable, shall be utilized as a basis for providing continuity of Service, and Service offerings, pending subsequent mutual agreement and

modification of this Contract by the parties; provided, however, if the parties are unable to reach such mutual agreement within a reasonable period of time and good faith effort, then the State may take action pursuant to the terms and conditions of this Contract, including but not limited to terminating the affected Service(s) without penalty.

8. CONTRACTOR'S POWER AND AUTHORITY

Contractor represents and warrants to the State that Contractor has full power and authority to grant the rights herein granted. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.

The Services provided by Contractor shall be under the control, management, and supervision of Contractor. Contractor is fully responsible for all work performed under this Contract including subcontracted work. Contractor is wholly responsible for the performance of its employees, agents, subcontractors and suppliers in fulfilling its obligations described in this Contract.

9. ASSIGNMENT

This Contract shall not be assignable by Contractor in whole or in part without the prior written consent of the State, which will not be unreasonably withheld.

10. WAIVER OF RIGHTS

Any action or inaction by either party or the failure of either party on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by such party of its rights hereunder and shall not prevent the parties from enforcing such provision or right on any future occasion. The rights and remedies of the parties herein are cumulative and are in addition to any other rights or remedies that the parties may have at law or in equity. A waiver by either of the parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant herein contained. All waivers must be in writing and signed by the party waiving its rights.

11. ORDER OF PRECEDENCE

In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:

- a. These General Provisions and any amendments thereto, including all of the attachments and Contract forms.
- b. The specifications and requirements contained in the RFP as incorporated herein and the agreements to meet the specifications and requirements in the RFP as stated in the Proposal. (The parties acknowledge and agree that silence in the Proposal with respect to a particular RFP specification or requirement equals consent by Contractor.)

- c. All other documents incorporated in the Contract by reference.
- d. All regulatory filings made pursuant to the terms and conditions of this Contract.

12. DELIVERY

Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract subject to Section 28. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. If Contractor delivers in excess of the quantities or Services specified herein, the State shall not be required to make any payment for the excess Deliverables or Services, and may return them to Contractor at Contractor's expense or utilize any other rights available to the State at law or in equity.

13. SUBSTITUTIONS

Substitution of Deliverables and Services may not be tendered without advance written consent of the State. The State will not unreasonably withhold its consent. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the State.

14. INSPECTION, ACCEPTANCE AND REJECTION

Unless otherwise specified in the Contract:

- a. Contractor and its subcontractors will provide and maintain a quality assurance system mutually agreed upon by the Contractor and the State covering Deliverables and Services under this Contract and will tender to the State only those Deliverables and Services that have been inspected and found to conform to this Contract's requirements. Contractor will keep records consistent with the agreed upon quality assurance system, and will make these records available to the State, on reasonable prior notice and at reasonable times and places during Contract performance and for four years after final payment. Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the extent to which Contractor's quality assurance system or other similar business practices directly related to performance of the Contract conform to the requirements of this Contract.
- b. All Deliverables and Services may be subject to inspection and test by the State or its authorized representatives.

- c. Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors, at no additional cost to the State, all information and data as may be reasonably required to perform their inspection.
- d. All Deliverables and Services may be subject to final inspection, test and acceptance as determined necessary by the State, notwithstanding any payment or inspection at source.
- e. The State shall give written notice of rejection of Deliverables delivered or Services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such Services. Such notice of rejection will state the respects in which the Deliverables or Services do not conform to their specifications and/or requirements. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.

15. WARRANTY

- a. Unless otherwise specified in the Contract the warranties in this subsection a) begin upon acceptance of the Deliverable or Service in question and continue through the Term. Contractor warrants to the State that (i) Deliverables and Services furnished hereunder will conform in all material respects to the requirements of this Contract, and (ii) the Deliverables and Services furnished will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a detailed design document) and incorporated the same or equivalent in the Statement of Work directly or by reference, Contractor will warrant that its Deliverables and Services furnished will conform in all material respects to the mutually agreed design specifications. The State's approval of designs or specifications furnished by Contractor shall not relieve Contractor of its obligations under this warranty.
- b. Contractor warrants that the Deliverables and Services furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e., computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any United States patent, copyright, trade mark, trade secret, or other proprietary right ("**Intellectual Property Right**") of a third party. Without limiting the generality of the foregoing, if harmful code is present in any Deliverable or Service, Contractor will use all commercially reasonable efforts, at no additional charge to the State, to eliminate and reduce the effects of such harmful code, including restoration of any lost data using generally accepted data restoration methods.
- c. Contractor warrants that the Services shall be performed, and all Deliverables and other materials prepared and delivered, in a timely, professional, efficient, diligent and workman-like manner, in accordance with the highest recognized professional standards and practices of quality and integrity in the industry, by qualified personnel fully familiar with the technology and methodologies used in performing the Deliverables and Services, and be fit for use as reasonably intended by the parties.

- d. Contractor represents and warrants that, as of the Effective Date, there is no outstanding or reasonably anticipated civil or criminal litigation, arbitrated matter, or other dispute, in any forum, to which Contractor or any of its Affiliates is a party that, if decided unfavorably to Contractor or its Affiliates, would reasonably be expected to preclude Contractor from entering into this Contract or have a material adverse effect on Contractor's ability to fulfill its obligations hereunder.
- e. Contractor represents and warrants (i) all Equipment, networks, Software and other resources utilized or provided by Contractor in connection with the Deliverables and Services (collectively, the "**Provided Resources**") shall be successfully interfaced with, and shall be compatible with, the services, systems, items, and other resources of the State and its other third party service providers with which they will interoperate (collectively, the "**State Resources**"), and (ii) none of the Deliverables, Services or other items provided to the State by Contractor shall be adversely affected by, or shall adversely affect, the State Resources or any Services provided by any such third party service providers, in any material respect, whether as to functionality, speed, service levels, interconnectivity, reliability, availability, performance, response times, or otherwise.
- f. Contractor represents and warrants that: (i) it has conducted a full and complete analysis of the State's requirements as specified in this Contract; (ii) it has performed sufficient due diligence investigations regarding the scope and substance of the Services and the Deliverables; (iii) it has received sufficient answers to all questions that it has presented to the State regarding the scope and substance of the Services and the Deliverables as well as the workings, capabilities, procedures, and capacities of the State's networks, equipment, hardware, and software associated with the provision of the Services and Deliverables; and (iv) it is capable in all respects of providing the Services and Deliverables in accordance with this Contract. Contractor hereby waives and releases any and all claims that it now has or hereafter may have against the State based upon any inaccuracy or incompleteness of the information it has received with regard to the scope and substance of the Services and the Deliverables, except where such information was willfully withheld or intentionally misrepresented by the State and where such claims are permitted under California law. Further, Contractor covenants that it shall not seek any judicial rescission, cancellation, termination, reformation, or modification of this Contract or any provision hereof, nor any adjustment in the charges to be paid for the Deliverables or Services, based upon any such inaccuracy or incompleteness of information except where such information was willfully withheld or intentionally misrepresented by the State.
- g. Contractor represents and warrants that Contractor, at Contractor's expense, shall (and shall cause all of its subcontractors to) maintain all Equipment, Systems, networks, and Software operated or used in performance of its obligations hereunder so that they operate in accordance with the service levels and their respective specifications, including: (i) maintaining such items in good operating condition, subject to normal wear and tear, (ii) performing repairs and preventative maintenance in a timely manner and in accordance with the manufacturer's recommendations and requirements; and (iii) performing Software maintenance in accordance with the applicable Software supplier's recommendations and requirements.
- h. All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, Customers, and End-Users of the Deliverables or Services.

- i. Except as may be specifically provided in this Contract, for any breach of the warranties provided in this Section, the State shall be entitled to:
 - i. Re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or Service; or
 - ii. Should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or Service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. The payment obligation in this subsection will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability" (Section 23).
- j. EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS CONTRACT, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

16. SAFETY AND ACCIDENT PREVENTION

In performing work under this Contract on State premises, Contractor shall conform to any specific safety requirements contained in the Contract and as required by law or regulation or any State rules applicable to such premises. Contractor's Equipment, Software, Systems and Services provided under this Contract shall comply with applicable laws and Contractor shall be responsible for any acts or omissions of agents or employees of Contractor in contravention of such laws. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes, including receipt of prescribed training prior to entering certain State premises. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

17. INSURANCE

Contractor shall maintain all commercial general liability insurance, worker's compensation insurance and any other insurance that State deems appropriate under the Contract. Contractor reserves the right to be self-insured with respect to some or all of the above coverage. All such insurance shall be procured with reputable insurance companies, which are admitted sureties in the State of California. Each Contract year, Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to the State. Each certificate of insurance shall provide that the issuing company shall not cancel, reduce, or otherwise materially alter the insurance afforded under the policies unless notice of such cancellation, reduction or material alteration has been provided at least thirty (30) calendar days in advance to the State. Upon request by the State, Contractor may be required to have the State shown as an "additional insured" on selected policies. The obligation of Contractor to provide the insurance specified herein shall not limit in any way any obligation or liability of Contractor provided elsewhere in this Contract. The

rights of the State to insurance coverage under policies issued to or for its benefit are independent of this Contract and shall not be limited by this Contract.

18. TERMINATION FOR NON-APPROPRIATION OF FUNDS

- a. If the Term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any Services supplied to the State under this Contract, and relieve the State of any further obligation therefore.
- b. STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, DELIVERABLES SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

19. TERMINATION FOR THE CONVENIENCE OF THE STATE

- a. The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Chief Deputy Director, DTS, or designee, determines that a termination is in the State's interest. The Chief Deputy Director, DTS, or designee, shall terminate by delivering to Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.
- b. After receipt of a Notice of Termination, and except as directed by the State, Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. Contractor shall:
 - i. Stop work as specified in the Notice of Termination (except as required by any Disentanglement Services).
 - ii. Place no further subcontracts for materials, Services, or facilities, except as necessary to complete the continuing portion of the Contract.
 - iii. Terminate all subcontracts to the extent they relate to the work terminated.
 - iv. Settle all outstanding liabilities and settlement proposals arising from the termination of subcontracts.

- c. Contractor and the State agree that the State shall have no obligation to pay any amount to Contractor upon the termination for convenience, other than, and in accordance with the terms of this Contract, the agreed price for Deliverables or Services accepted by the State and not previously paid for, adjusted for any savings on freight and other charges plus any unrecovered amortized capital costs originally identified in writing by Contractor and approved in advance by the State, calculated using Generally Accepted Accounting Principles. Contractor shall submit a final termination settlement proposal within ninety (90) calendar days from the effective date of termination.

20. TERMINATION FOR DEFAULT

- a. The State may, subject to the clause titled "Force Majeure" (Section 21) and to subsection d. below, by written notice of default to Contractor, terminate this Contract in whole or in part if Contractor fails to:
 - i. Deliver the Deliverables or perform the Services within the time specified in the Contract or any amendment thereto;
 - ii. Make progress, so that the lack of progress endangers performance of this Contract; or
 - iii. Perform in accordance with any of the other provisions of this Contract.
- b. The State's right to terminate this Contract under subsection a. above, may be exercised if (i) the failure constitutes a material breach of this Contract and if Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event will be less than thirty (30) calendar days, unless a shorter period is specifically set forth elsewhere under this Contract; or (ii) there are repeated or numerous failures by Contractor for which the State has provided notice, which collectively constitute a material breach of this Contract. Without limiting the generality of the foregoing, Contractor hereby agrees that each of the following events shall be deemed a material breach by Contractor:
 - i. Contractor's failure to comply with its obligations under Sections 36.a, 77, 78, 83.a and/or 84;
 - ii. Submission of inaccurate reports or invoices that result in a material adverse financial impact on the State;
 - iii. Any modifications or alterations to an Ordering Document, Individual Price Reduction Notification document, Authorization to Order Under State Contract or ICB Pricing documentation by Contractor that were not authorized or approved by the State;
 - iv. Contractor's refusal to provide Services and Deliverables requested hereunder pursuant to a proper Ordering or Individual Price Reduction Notification Document; and
 - v. Any efforts by Contractor, without the State's prior approval, to market to or otherwise solicit the following entities to enter into a separate agreement for deliverables and services that are the same or substantially similar to the Deliverables and Services: (a) an

entity that is receiving such particular Deliverables and Services under this Contract or (b) an entity that is mandated by the State to obtain Deliverables and Services pursuant to this Contract.

- c. If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire from an alternative provider, under terms and in the manner the State considers appropriate, Deliverables or Services similar to those terminated, and Contractor will be liable to the State for the State's Cost to Cover (but subject to the clause entitled "Limitation of Liability" (Section 23)). However, Contractor shall continue to provide all Deliverables and Services not expressly terminated by the State.
- d. If the Contract is terminated for default, the State shall be entitled to require Contractor to, and Contractor shall, transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the State, any;
 - i. Completed Deliverables, and
 - ii. Partially completed Deliverables.

Upon direction of the State, Contractor shall also protect and preserve property in its possession in which the State has an interest.

- e. The State shall pay the agreed upon Contract price for completed Deliverables, partially completed Deliverables provided pursuant to subsection d. above, and Services delivered and accepted.
- f. If, after termination, it is determined by a final ruling in accordance with the dispute resolution process under this Contract that Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled "Limitation of Liability" (Section 23).
- h. Except as may be permitted or required under the United States Bankruptcy Code or Section 36.a, Contractor may not, for any reason whatsoever, terminate this Contract or otherwise repudiate this Contract or refuse to perform its obligations hereunder.

21. FORCE MAJEURE

- a. Contractor shall not be liable for any default or delay in the performance of its obligations under this Contract if and to the extent such default or delay arises from fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of Contractor except to the extent that Contractor is at fault in failing

to prevent or causing such default or delay, and provided that such default or delay can not reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means. A default of a subcontractor at any tier shall not be considered a force majeure event. A strike, lockout or labor dispute involving agents or employees of Contractor shall not excuse Contractor from its obligations hereunder. In addition, the refusal of any agent or employee of Contractor to enter a facility that is the subject of a labor dispute shall excuse Contractor from its obligations hereunder only if and to the extent such refusal is based upon a reasonable fear of harm. If the delay or failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control (as described above) of both Contractor and subcontractor, and without the fault or negligence of either, Contractor shall not be liable for any default or delay in the performance of such obligations, unless the subcontracted Deliverables or Services were obtainable from other sources (including Contractor itself) in sufficient time for Contractor to meet the required delivery schedule.

- b. In the event of such a force majeure event, Contractor shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and Contractor continues to use all commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. If Contractor is so prevented or delayed in its performance Contractor shall, as quickly as practicable under the circumstances, notify the State and describe at a reasonable level of detail the circumstances of the force majeure event, the steps being taken to address it, and its expected duration.
- c. If any such force majeure event has substantially prevented or delayed the delivery of or performance by Contractor of Deliverables or Services necessary for the performance of critical State functions for longer than the recovery period specified in the applicable disaster recovery plan, Contractor shall, to the extent practicable and at Contractor's expense, procure such Deliverables or Services from an alternate source. In addition, if any such force majeure event substantially prevents or delays the delivery or performance by Contractor of such Deliverables or Services necessary for the performance of critical State functions for more than seven (7) calendar days, the State, at its option, may terminate the whole or any portion of this Contract so affected without payment of termination charges and, if terminated only in part, the charges payable hereunder shall be equitably adjusted to reflect those terminated Deliverables or Services. Contractor shall not have the right to additional payments or increased usage charges as a result of any force majeure occurrence affecting Contractor's ability to perform.
- d. Upon the occurrence of a force majeure event that constitutes a disaster under the Disaster Recovery and Security Plan, Contractor shall implement promptly, as appropriate, and in accordance with Section (f) below, its Disaster Recovery and Security Plan and provide disaster recovery Services to the State. The occurrence of a force majeure event shall not relieve Contractor of its obligation to implement its Disaster Recovery and Security Plan and provide disaster recovery Services.
- e. If Contractor fails to provide Services in accordance with this Contract due to the occurrence of a force majeure event, all amounts payable to Contractor hereunder shall be

equitably adjusted in a manner such that the State is not required to pay any amounts for Services that it is not receiving.

- f. Without limiting Contractor's obligations under this Contract, or impairing Contractor's emergency service and public safety priority requirements for its customers generally, whenever a force majeure event or disaster causes Contractor to allocate limited resources between or among its customers, the State shall receive at least the same treatment as comparable Contractor customers consistent with Contractor's obligations and duties for public safety emergency service priority response and restoration as required by applicable law and regulation and separate contractual obligations with emergency service providers.

22. RIGHTS AND REMEDIES OF STATE FOR DEFAULT

- a. In the event any Deliverables furnished or Services provided by Contractor in the performance of the Contract should fail to conform to the requirements herein, the State may reject the same, and it shall become the duty of Contractor to reclaim and remove the Deliverable promptly or to correct the performance of the Services, without expense to the State, and immediately replace or re-perform all such rejected Deliverables or Services, as applicable, with others conforming to the Contract.
- b. In addition to any other rights and remedies the State may have, the State may require Contractor, at Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of Contractor.
- c. In the event of the termination of this Contract, either in whole or in part, by reason of default or breach by Contractor, any loss or damage sustained by the State in procuring any items or Services which Contractor agreed to supply shall be borne and paid for by Contractor, subject to the Limitation of Liability included in this Contract.

23. LIMITATION OF LIABILITY

- a. Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to \$300 Million, except as expressly set forth below.
- b. The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to the total charges due and payable to Contractor hereunder that have not been paid to Contractor. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.

- c. Neither Contractor nor the State will be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except as expressly set forth below.
- d. Sections 23(a) and (c) will not apply to Contractor's liability for damages (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work; (ii) in connection with liability under the provision, entitled "Patent, Copyright, and Trade Secret Protection" (Section 32) or to any other liability (including without limitation indemnification obligations) for infringement of third party Intellectual Property Rights; (iii) in connection with claims covered by any specific provision herein calling for performance deficiency charges; (iv) in connection with claims arising under provisions herein calling for indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; (v) in connection with costs or attorneys' fees that the State becomes entitled to recover as a prevailing party in any action; (vi) in connection with breaches of Contractor's obligations of confidentiality; (vii) in connection with claims based upon a breach of Section 36.a hereof or upon any repudiation of this Contract by Contractor or Contractor's refusal to perform its duties and obligations hereunder; (viii) for Cost to Cover damages; or (ix) in connection with Contractor's failure to perform its obligations under Section 21 in the event of a force majeure event.

24. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY

- a. Contractor shall be liable for damages arising out of injury to person(s) and/or damage to the property of the State, employees of the State, or any other person(s) designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables or Services either at Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault, negligence, or willful misconduct of Contractor.
- b. Contractor shall not be liable for damages solely arising out of or caused by an alteration or an Attachment not made or installed by Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by Contractor during the Contract.

25. INDEMNIFICATION

Contractor agrees to indemnify, defend and hold harmless the State, its officers, agents and employees from any and all third party claims, losses, damages, liabilities, costs and expenses (including without limitation reasonable attorneys' fees and costs), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, Deliverables, Services,

materials, or supplies in connection with the performance of this Contract. The following shall apply with respect to such claims:

- a. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time (but no delay or failure to so notify Contractor shall relieve it of its obligations under this Contract except to the extent that Contractor has suffered actual prejudice by such delay or failure); and
- b. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

26. TIMELINESS

Time is of the essence in this Contract with respect to Contractor's performance and obligations.

27. REQUIRED PAYMENT DATE

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 *et seq.* Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of Services; or (ii) receipt of an undisputed invoice, whichever is later. Non-State Customers shall be subject to a late payment fee if payment is issued after the late payment date. The late payment date shall be forty-five (45) calendar days after receipt of an undisputed invoice. The amount of the late payment fee shall be as set forth in Government Code Sections 927.6 and 927.7.

28. CONTRACT MODIFICATION

Subject to Sections 2.a, 55 and 72, no amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties. Notwithstanding this provision:

- a. The State and Contractor may agree orally on issues of immediate State operational need or emergency necessity with the concurrence of the State and Contractor Program Managers, respectively. In such situations, Contractor will prepare a Letter of Concurrence within three (3)

Business Days and submit it to the State for concurrence. The Letter of Concurrence will be considered binding on both parties for the period of the term of the Letter of Concurrence or until written modification of the Contract is made in accordance with this Section 28, whichever applies.

- b. The State and Contractor may propose informal changes or revisions to the activities, tasks, deliverables and/or performance time frames specified in the Statement of Work, provided such changes do not alter the overall goals and basic purpose of this Contract. Informal Statement of Work changes may include, subject to Sections 12 and 13, the substitution of specified activities or tasks; the alteration or substitution of Contract Deliverables; and modifications to anticipated completion/target dates. Informal Statement of Work changes processed hereunder shall not require a formal amendment to this Contract, provided Contractor's annual budget (or the fees received hereunder) does not increase or decrease as a result of the informal Statement of Work change. Unless otherwise stipulated in this Contract, all informal Statement of Work changes and revisions are subject to prior written approval by the State. In implementing this provision, the State may provide a format for the State and Contractor to use to request informal Statement of Work changes. If no format is provided by the State, Contractor may devise its own format for this purpose.

Any change to the Contractor's name will require a Contract amendment. The State, upon notification and receipt of legal documentation indicating the name change from the Contractor, will process the required amendment, assuming no other change has been made to the business entity.

29. CONFIDENTIALITY OF DATA

All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State (or which should be reasonably understood to be confidential) and made available to Contractor in order to carry out this Contract, or which become available to Contractor in carrying out this Contract, shall be protected by Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State, but in no event less than reasonable care. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to Contractor. If the methods and procedures employed by Contractor for the protection of Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available other than through a breach of Contractor's or a third party's confidentiality obligations, is already rightfully in Contractor's possession without an obligation of confidentiality, is independently developed by Contractor outside the scope of this Contract and without reference to the State's confidential data or information, or is rightfully obtained from third parties without an obligation of confidentiality.

30. PUBLICITY

Contractor shall not use the name, mark, or logo of, or refer to, the State or any department, division, Agency or Customer thereof, directly or indirectly in any news releases, public announcements, communications, correspondence or public disclosures pertaining to this Contract, including in any promotional or marketing materials, customer lists or business presentations, without the prior written approval of the DTS/ONS (which will not be unreasonably withheld) or except as may be set forth elsewhere in the Contract. Contractor and its representatives shall not make any statement to authorized users of the Services implying that a particular service is available to such authorized users under this Contract when such service has not been proposed or approved by the State for inclusion under this Contract.

31. PROTECTION OF CONTRACTOR FURNISHED PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA

- a. State agrees that all material appropriately marked or identified in writing as proprietary, and furnished by Contractor hereunder are provided for State's use exclusively, for the purpose of this Contract only. All such proprietary data shall remain the property of Contractor. State agrees to take all reasonable steps to ensure that such proprietary data are not disclosed to others, without prior written consent of Contractor, subject to the California Public Records Act.
- b. The State will ensure, prior to disposing of any Contractor furnished media, that any licensed materials contained thereon have been erased or otherwise destroyed.
- c. The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to Contractor furnished licensed Software and other proprietary data to satisfy its obligations under this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

32. PATENT, COPYRIGHT AND TRADE SECRET PROTECTION

- a. Contractor will indemnify, defend, and hold harmless the State, its officers, agents and employees, from any and all third party claims, losses, damages, liabilities, costs and expenses (including without limitation reasonable attorneys' fees and costs), and losses for infringement or violation of any Intellectual Property Right by any product, Deliverable or Service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from third party ("**Third Party Obligation**") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this

Section 32a. The provisions of the preceding sentence apply only to third party Hardware or Software sold as a distinct unit and accepted by the State.

The following shall apply with respect to such claims:

- i. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time (but no delay or failure to so notify Contractor or tender the defense to Contractor shall relieve it of its obligations under this Contract except to the extent that Contractor has suffered actual prejudice by such delay or failure); and
 - ii. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- b. Contractor may be required to furnish a bond of reasonable amount to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c. Should the Deliverables or Software, or the operation thereof, become, or in Contractor's opinion are likely to become, the subject of a claim infringement or violation of a Intellectual Property Right, Contractor shall, at its sole expense, either procure for the State the right to continue using the Deliverables or Software, or replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables or Software by the State shall be prevented by injunction, Contractor agrees to take back such Deliverables or Software and assist the State in procuring substitute Deliverables or Software. In such event, Contractor shall be liable to the State for the State's Cost to Cover. If in the sole opinion of the State, the return of such infringing Deliverables or Software makes the retention of other Deliverables of Software acquired from Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. Under circumstances where the State has a right of return, Contractor agrees to take back such Deliverables and Software and refund all sums the State has paid Contractor for such items.
- d. Contractor's obligations under this Section 32 shall not apply to the extent that the applicable claim of patent, copyright or trade secret infringement is based upon:
- i. The combination or utilization of Deliverables furnished hereunder with equipment or devices not made or furnished by Contractor; or,
 - ii. The operation of Equipment furnished by Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or

- iii. The modification by the State of the Equipment furnished hereunder or of the Software;
or
 - iv. The combination or utilization of Software furnished hereunder with non-Contractor supplied or approved Software.
- e. Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

33. EXAMINATION AND AUDIT

- a. Without limiting any examination or audit rights, or other rights of the State set forth in the Contract, Contractor agrees that the State, or its designated representative, shall have the right, at any tier or level, to audit, review and copy any records and supporting documentation pertaining to performance of and invoicing under this Contract and to audit the practices and facilities used by Contractor to provide the Services and related operational matters. Contractor agrees to maintain such records for possible audit for a minimum of four (4) years after final payment and five (5) years for Federal Universal Service Fund ("E-rate") funded projects, unless a longer period of records retention is stipulated or required by law. Contractor agrees to allow the auditor(s) access to such records and facilities during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. The State agrees to take all reasonable steps to ensure that such information is not disclosed to third parties, subject to the California Public Records Act.

For avoidance of doubt, audits may include those conducted by personnel of the State, or its designated representative, in performance of Contract oversight responsibilities in reviewing invoices, monthly fiscal management and/or other required reports, as well as the application of service taxes, fees, surcharges and surcredits on invoices.

If an audit reveals that Contractor has overcharged the State or Agency for Service(s) during the period to which the audit relates, then Contractor shall promptly refund such overcharges to the State or Agency as appropriate, and, if the amount of the overcharge (offset by any undercharges revealed by such audit) is more than five percent (5%) of Contractor's charges to the State or Agency for such Service(s) for such period, the reasonable cost of such audit (including any imputed costs of State for audits performed by the State itself) shall be borne by Contractor.

If any audit reveals an inadequacy or insufficiency of Contractor's performance, including performance in connection with any security obligations of Contractor as set forth in this Contract, Contractor shall promptly develop and provide to the State, for approval, a reasonable and detailed corrective action plan and promptly thereafter implement such plan in accordance with its terms. In addition, the cost of such audit, and subsequent related audits or audit activity, shall be borne by Contractor in the event that: (i) the State specifically identifies a particular deficiency with respect to Contractor's performance of any particular Service; and (ii) Contractor either denies or fails to cure such identified deficiency within thirty (30) calendar days. Further,

Contractor agrees to include an equivalent right of the State to audit records and facilities and interview staff in any subcontract related to performance of and invoicing under this Contract.

- b. Notwithstanding anything to the contrary in Section 33.a above, DTS/ONS, on behalf of the State or any auditing body or its designated representative, agrees that it will not exercise the audit rights described in Section 33.a above for purposes of conducting an enterprise-wide audit of Contractor's performance under this Contract (i.e., Contractor's performance hereunder with respect to all issued Ordering Documents) more than once per calendar year, however, any follow-up reviews or other investigations related to an audit initiated under this Section may be conducted at any time and from time to time.
- c. Where Contractor conducts an internal audit of Contractor's performance under this Contract which shows any significant failures by Contractor to meet its obligations hereunder, Contractor shall provide to the State a written summary describing in reasonable detail such findings of such internal audit. If Contractor determines at any time that it has overcharged any Customer, then Contractor shall promptly provide to the applicable Customer a credit equal to the amount of such overcharge plus interest from the date of Contractor's receipt of such overcharge at a rate which is consistent with the rate provided in the California Prompt Payment Act, Government Code Section 927 *et seq.*
- d. Contractor agrees that (i) DTS/ONS or its delegate will have the right to obtain, copy and review all billing records of public entities purchasing under this Contract, provided that notice of such rights is included within the Authorization to Order Under State Contract used by non-State Agencies purchasing under the Contract; and (ii) the State may forward audit results showing call rate discrepancies to the CPUC.

34. CONTINUING STANDARDS OF PERFORMANCE FOR CONTRACTOR SERVICES

a. Applicability

Contractor agrees that subsequent to completion of the successful performance period and acceptance of the Services by the State, Contractor will comply with the availability and/or performance requirements and criteria established in this Contract throughout the full Term, including any extensions. If the State determines, after at least six (6) months experience with the measurement method prescribed below, that the methods and procedures should be modified to more accurately identify material System deficiencies, an appropriate Contract amendment shall be negotiated and upon agreement executed to effect such modification.

b. Causes and Effects of Contractor Service Malfunctions

- i. The State recognizes that Equipment Failures do occur, and that Software is not infallible. Moreover, the State concedes that conditions external to Equipment may cause it to fail, particularly environmental conditions, that are outside the Equipment design operating parameters. The State agrees, therefore, that unsatisfactory Contractor Service

performance which is outside the control of Contractor or Contractor Personnel will not be considered in a determination of the level of performance.

- ii. In the event Contractor's Service failure or unsatisfactory performance is a result of factors external to CALNET II, Contractor agrees to make appropriate recommendations to the State in order that such external factors may be corrected to preclude future problems of a similar nature. Within five (5) business days after such failure occurs, Contractor shall meet and confer with the State regarding appropriate next steps, which may include preparation, for the State's review, comment and approval, of a milestone-based action plan making such recommendations and corrections described in the preceding sentence.
- iii. In the event that the precise cause of a failure cannot be readily determined, both the State and Contractor shall continue to research the situation until the probable cause has been identified or until agreement is reached that the probable cause cannot be identified. Within five (5) business days after such failure occurs (or such other timeframe specified in the RFP), Contractor shall meet and confer with the State regarding appropriate next steps, which may include preparation, for the State's review, comment and approval, of a milestone-based action plan for researching the probable cause of the failure.

c. Levels of Performance Required

Contractor shall perform the Deliverables and the Services at the levels of quality, completeness, accuracy, timeliness, responsiveness and efficiency that are consistent with the accepted industry standards applicable to the performance of such Deliverables and the Services or, if higher, the levels of the same received by the State prior to the Effective Date and as set out in applicable service performance exhibits or the Statement of Work, agreed upon by the parties and incorporated into the Contract. Without limiting the foregoing or other obligations of Contractor, for those Deliverables and Services for which the Statement of Work specifies a particular service level, Contractor shall provide all Deliverables and Services at levels at least in accordance with such service levels.

d. Remedies for Unacceptable Levels of Performance

If a Contractor Deliverable or Service does not meet the minimum level of performance as set forth in the Statement of Work, the remedy or process for correction set forth in the Statement of Work will be followed by the parties. If the specific Deliverable or Service has no remedy or process for correction set forth in the Statement of Work, State shall promptly notify Contractor in writing of such unacceptable performance and the impact on the State, and Contractor shall promptly initiate action to remedy the unsatisfactory performance. Contractor shall, at its option, take one or more of the following actions to correct the situation:

- i. Provide on site Contractor personnel for analysis of the problem;
- ii. Replace the faulty Equipment, Deliverable or Service;
- iii. Provide substitute Equipment, Deliverable or Service satisfactory to the State;

- iv. Modify the Equipment, Deliverable or Service; or
- v. Take any other action with which the State concurs.

If Contractor fails to correct an unacceptable level of performance with respect to any Equipment, Deliverable, or Service to the satisfaction of the State during the thirty (30) calendar days following receipt of written notice from the State (or such other timeframe specified in the Contract), the State and Contractor can mutually agree to extend the time to a specified date. If Contractor fails to correct the situation to the satisfaction of the State by the end of the specified time period, then, without limiting any other remedy specified in the Contract, the State may (i) secure replacement Equipment, Deliverables, or Services with Contractor responsible for payment of Costs to Cover, and/or (ii) terminate that portion of the Contract relating to the deficient Equipment, Deliverable, or Service. The above-described remedies are not intended to constrain either party from any other action mutually agreed to by Contractor and the State as being more appropriate or to limit any of the State's other rights and remedies under this Contract, at law or in equity, including the application of Performance Deficiency Charges (Section 50) or the exercise of Set-Off Rights (Section 51).

- e. Replacement or Substitution of Equipment by Contractor

If Contractor, in an attempt to improve the level of performance, replaces or substitutes Equipment that meets all of the Contract requirements, such replacement or substitution shall be at no cost to the State.

- f. Review of Performance

Contractor's performance will be periodically evaluated in accordance with the service levels for each Service delivered throughout the term of this Contract. In accordance with the California Government Code, Contractor performance evaluation will be completed within the guidelines of the State Administrative Manual, Section 1283.

35. DISPUTES

- a. The parties shall deal in good faith and attempt to resolve potential disputes informally. All disputes, for which California law (e.g., the California Prompt Payment Act) does not otherwise specify a dispute resolution process, shall immediately be brought to the attention of the parties' respective project managers. If the dispute persists, and the project managers are not able to agree on a resolution to any particular issue within ten (10) calendar days after the dispute initially became known to each party, then either party may submit the dispute to a CALNET II leadership group consisting of DTS/ONS Senior Management and Senior Program Management of the Contractor for resolution. This CALNET II leadership group will convene in person or by telephone within three (3) business days after the dispute is submitted to the CALNET II leadership group. If the dispute persists, and the CALNET II leadership group is not able to agree on a resolution to any particular issue within ten (10) calendar days after the dispute was initially submitted to the CALNET II leadership group, then Contractor shall submit the dispute to an

executive committee consisting of the State's project manager and representatives of DTS/ONS's executive management, a representative of DGS/PD, and Contractor's project manager and designated senior representatives of Contractor for resolution. This executive committee will convene in person or by telephone within three (3) Business Days after the dispute is submitted to the executive committee. If the dispute persists and the executive committee is not able to agree on a resolution to any particular issue within ten (10) calendar days after the dispute was initially submitted to the executive committee, then Contractor shall submit to the Chief Deputy Director, DTS, or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the State is liable.

- b. Pending the final resolution of any dispute arising under, related to or involving this Contract, for which California law (e.g., the California Prompt Payment Act) does not otherwise specify a dispute resolution process, both parties agree to diligently proceed with the performance of this Contract, including State's payment for and Contractor's delivery of goods or providing of Services in accordance with this Contract. The failure to diligently proceed in accordance with this Contract shall be considered a material breach of this Contract.
- c. Any final decision of the State shall be expressly identified as such in writing, and shall be signed by the Chief Deputy Director, DTS, or designee. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within ninety (90) days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

36. STOP WORK

- a. Notwithstanding anything to the contrary contained herein, and even if any dispute arises between the parties and regardless of whether or not it requires at any time the use of the dispute resolution procedures described above, in no event nor for any reason shall Contractor interrupt the provision of Services to the State or any obligations related to Disentanglement under Section 77, disable any Equipment or Software used to provide Services, or perform any other action that prevents, impedes, or reduces in any way the provision of Services or the State's ability to conduct its activities (other than minimal, routine interruptions necessary in order for Contractor to provide the Services), unless: (i) authority to do so is granted by the State or conferred by a court of competent jurisdiction; or (ii) the Term of this Contract has been terminated or has expired pursuant to Section 19 or 20 and a Disentanglement has occurred in accordance with Section 77.
- b. Without limiting the generality of Section 36.a, above, the State may, at any time, by written Stop Work Order to Contractor, require Contractor to stop all, or any part, of the work called for by

this Contract for a period of ninety (90) days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:

- i. Cancel the Stop Work Order; or
 - ii. Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- c. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, this Contract price, or both, and this Contract shall be modified, in writing, accordingly, if:
 - i. The Stop Work Order results in an increase in the time required for, or in Contractor's cost properly allocable to the performance of any part of this Contract; and
 - ii. Contractor asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- d. If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- e. The State shall not be liable to Contractor for loss of profits because of a Stop Work Order issued under this clause.

37. FOLLOW-ON CONTRACTS

- a. If Contractor or its Affiliates provides Technical Consulting and Direction (as defined below), Contractor and its Affiliates:
 - i. Will not be awarded a subsequent Contract to supply the Deliverables, Services, or Systems, or any significant component thereof, that is used for or in connection with any subject of such Technical Consulting and Direction; and

- ii. Will not act as consultant to any person or entity that does receive a Contract described in subsection i. This prohibition will continue for one (1) year after termination of this Contract or completion of the termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.
- b. **“Technical Consulting and Direction”** means Services for which Contractor received compensation from the State and includes:
 - i. Development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies;
 - ii. Development or design or test requirements;
 - iii. Evaluation of test data;
 - iv. Direction of or evaluation of another Contractor;
 - v. Provision of formal recommendations regarding the acquisition of Information Technology products or Services; or
 - vi. Provisions of formal recommendations regarding any of the above.
- c. The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law (**“Conflict Laws”**). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.

38. PRIORITY HIRING

If this Contract includes Services in excess of \$200,000, Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Public Contract Code Section 10353.

39. COVENANT AGAINST GRATUITIES

Contractor represents and warrants to the State that no gratuities (in the form of entertainment, gifts or otherwise) were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this representation and warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by Contractor. The rights and remedies of the

State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or equity.

40. NONDISCRIMINATION CLAUSE

- a. During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 *et seq.*) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- b. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

41. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 10296.

42. ASSIGNMENT OF ANTITRUST ACTIONS

Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a. In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under

Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, or Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material and other items, or Services by the supplier of sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.

- b. If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- c. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
 - i. The assignee has not been injured thereby, or
 - ii. The assignee declines to file a court action for the cause of action.

43. DRUG-FREE WORKPLACE CERTIFICATION

Contractor certifies under penalty of perjury under the laws of the State of California that Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 *et seq.*) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. The person's or organization's policy of maintaining a drug-free workplace;
 - iii. Any available counseling, rehabilitation and employee assistance programs; and,
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
- c. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:

- i. Will receive a copy of the company's drug-free policy statement; and
- ii. Will agree to abide by the terms of the company's statement as a condition of employment on the Contract.

44. FOUR-DIGIT DATE COMPLIANCE

Contractor represents and warrants to the State that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or Services to the State. **"Four Digit Date Compliant"** Deliverables and Services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality or warranty obligations set forth elsewhere herein.

45. SWEATFREE CODE OF CONDUCT

- a. Contractor declares under penalty of perjury that no Equipment, materials, or supplies furnished to the State pursuant to the Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at <http://www.dir.ca.gov> and Public Contract Code Section 6108.
- b. Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).

46. RECYCLING

Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this section shall specify that the cartridges so comply (PCC 12205).

47. CHILD SUPPORT COMPLIANCE ACT

For any Contract in excess of \$100,000, Contractor acknowledges in accordance with Public Contract Code Section 7110, that:

- a. Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b. Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

48. AMERICANS WITH DISABILITIES ACT

Contractor represents and warrants to the State that Contractor currently complies and at all times during the Term of this Contract will comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

49. [INTENTIONALLY OMITTED]**50. PERFORMANCE DEFICIENCY CHARGES****a. General**

The State and Contractor agree that, in addition to the other rights of the State hereunder, the State, in its sole discretion, may invoice Contractor for performance deficiency charges to reflect Contractor's failure to perform its obligations under this Contract with respect to the performance of administrative, reporting, and relationship management functions, or due to the deficiency, delay, lack of professionalism, incompleteness, or other sub-standard nature of such performance of administrative, reporting, and relationship management functions. The parties acknowledge that any performance deficiency charges provided for herein are distinct from any service level credits provided for elsewhere in this Contract. Prior to invoicing Contractor, the State shall notify Contractor of, and meet with Contractor to confer regarding, the performance deficiency charges, the underlying failures or deficiencies in Contractor's performance, and alternative remedies and/or cures, if any, with respect to such failures or deficiencies. Contractor shall be provided a reasonable cure period (not to exceed sixty (60) calendar days) before the State

invoices the performance deficiency charge. If a cure to the State's satisfaction has not been achieved during the permitted cure period, the State may invoice Contractor for the performance deficiency charge(s). Contractor shall pay to the State or its designee all performance deficiency charges within thirty (30) calendar days of receipt of an invoice therefor. Notwithstanding the preceding sentence, Contractor may in good faith dispute that it failed to perform its obligations under this Contract with respect to the performance of administrative, reporting, and relationship management functions by providing written notice of such dispute. In the event of such a dispute, Section 35 will be followed prior to the Contractor being obligated to pay the disputed part of the invoice. Such performance deficiency charges shall constitute agreed fee reductions and not penalties or liquidated damages hereunder.

- b. Without limiting paragraph (a) of this Section: (i) the State has identified in RFP Section 4.5.10, Table 4A, certain amounts the State may assess as performance deficiency charges for certain situations (which may be modified from time to time upon agreement by the parties); and (ii) the parties presently anticipate that (a) DTS/ONS shall issue any invoices for performance deficiency charges and facilitate the meetings described in this Section, and (b) Contractor shall pay any performance deficiency charges to the entity identified by the State as the beneficiary of the Deliverables and Services to which the performance deficiency charges relate.
- c. Contractor shall provide all assistance and support reasonably necessary for the administration of such performance deficiency charges, including, the provision of additional documentation regarding Contractor's performance hereunder and the payment of the performance deficiency charges as directed by the State.
- d. Contractor may not earn back, with subsequent performance or otherwise, the amounts of any performance deficiency charges that become due the State.

51. SET-OFF RIGHTS

Notwithstanding anything to the contrary in this Contract, and in addition to the other rights of the State and/or the applicable Customer hereunder with respect to disputing invoices or withholding amounts, the State and/or the applicable Customer, in its sole discretion, may set off against any and all amounts otherwise payable to Contractor pursuant to any of the provisions of this Contract: (i) any and all amounts claimed by the State and/or the applicable Customer in good faith to be owed by Contractor to the State and/or the applicable Customer pursuant to any of the provisions of this Contract; and (ii) any and all amounts that the State and/or the applicable Customer believes in good faith that it does not owe to Contractor pursuant to any of the provisions of this Contract. Within twenty (20) calendar days after any such set-off by the State and/or applicable Customer, the State and/or applicable Customer shall provide Contractor with a written accounting of such set-off, a written statement of the reasons therefore, and a reasonable opportunity to meet and discuss the claimed set-off. In the event Contractor does not agree with the set-off applied, Contractor or applicable Customer may contact DTS/ONS to seek equitable resolution or exercise its right under applicable law. The escalation procedure beyond the project manager in Section 35 shall not apply.

52. CONTRACTOR PERSONNEL

- a. When Contractor needs access to State's premises to perform the required Services under this Contract, Contractor personnel shall perform their duties during State's regular work days and normal work hours, except as may be specifically agreed to otherwise by the State and Contractor.
- b. The State reserves the right to disapprove the continuing assignment of Contractor personnel working on State premises. If the State exercises this right, and Contractor cannot immediately replace the disapproved personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected hereby.
- c. Contractor will make every effort consistent with sound business practices to honor the specific request of the State with regard to assignment of its employees; however, subject to the above paragraph and the paragraph below, Contractor reserves the sole right to determine the assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors beyond Contractor's control, Contractor will make every reasonable effort to provide suitable substitute personnel.
- d. Contractor represents that the individuals designated as Key Personnel in the Contract are, and promises that any subsequent Key Personnel shall be, experienced professionals, possessing the appropriate knowledge, skills, and expertise to perform properly their assigned duties. With regard to each of the Key Personnel, including replacements for the Key Personnel, Contractor shall exercise every reasonable effort to not transfer the Key Personnel during the first eighteen (18) months (or such other time periods as may be specified in the RFP or any Statement of Work) after the date that such individual commences performing Services as one of the Key Personnel hereunder. Contractor may transfer or terminate Key Personnel at any time in the event the needs of Contractor's business support a transfer, or the individual is eligible for a promotion or other positive type of employment opportunity, or the individual's personal life experience requires a transfer, or the individual's employment is terminated for "good cause" (which term, as used in this Contract, means cause for termination, including a lay-off, as determined in accordance with Contractor's employment policies, consistently applied). Contractor shall exercise every reasonable effort to notify the State prior to the transfer of Key Personnel to another position within Contractor's organization, including upon any such replacement or reassignment if the function being performed by the individual being replaced or reassigned is eliminated from the Services. If any of the Key Personnel is reassigned, becomes incapacitated, or ceases to be employed by Contractor, and therefore becomes unable to perform the functions or responsibilities assigned to such person, Contractor shall promptly replace such person with another person at least as well qualified to perform such functions and responsibilities as the person being replaced, and the State shall have the right to interview (in the presence of a Contractor representative) and provide input to Contractor concerning each such replacement. The parties acknowledge that qualifications include a mix of experience and education and that equally qualified individuals may have different mixes thereof. Contractor shall cause its subcontractors to comply with this provision with respect to any of individuals of such subcontractors that are designated as Key Personnel.
- e. In recognition of the fact that Contractor personnel providing Deliverables or Services under this Contract may perform similar services from time to time for others, subject to the above

paragraph, this Contract shall not prevent Contractor from performing such similar services or restrict Contractor from using the personnel provided to the State under this Contract, providing that such use does not conflict with the performance of Services under this Contract.

- f. Contractor shall submit annually a business plan that demonstrates a commitment to providing qualified staff and resources to support authorized user, business activities and Contract management.

53. RESPONSIBILITIES OF THE STATE

- a. The State shall cooperate with Contractor by, among other things, making available, as reasonably requested by Contractor, information, approvals, acceptances and management decisions so that Contractor may accomplish its obligations and responsibilities hereunder.
- b. The State is responsible for providing required information, data, Documentation, and test data to facilitate Contractor's performance of the work, and will provide such additional reasonable assistance as is specifically set forth in the Statement of Work.
- c. Unless otherwise agreed in writing by the parties, the State shall not have any operational responsibilities other than those set forth in this Section 53.
- d. Contractor's failure to perform its responsibilities under this Contract, shall be excused if and to the extent that it is caused directly by the State's breach of its material responsibilities set forth in this Section 53, but only if (i) Contractor promptly notifies the State of such material breach and its inability to perform under such circumstances, (ii) Contractor provides the State with every reasonable opportunity to correct such material breach and thereby avoid such Contractor non-performance, and (iii) Contractor uses commercially reasonable efforts to perform notwithstanding the State's material breach. Contractor's performance shall only be excused under this Section for an amount of time equal to the duration of the State's delay in meeting its applicable obligation. In the event of any claim for equitable adjustment to schedule, the parties will negotiate in good faith regarding execution of a Contract amendment.

54. CONTRACTOR BUSINESS RELATIONSHIP RESPONSIBILITY

- a. Contractor shall fully cooperate with the State and the other Module Contractors as necessary to coordinate the performance of the Module Services, including participation in any advisory forum established by the State and the establishment of business processes that facilitate the orderly Transition, Migration, and Transfer of Customers to other Module Services and the implementation of any other ongoing provisioning support for Services.
- b. Contractor shall demonstrate how business arrangements and practices will support Module Services.

- c. If Contractor and any Affiliate have been awarded more than one of the Contracts, and separate Affiliates will provide the Module Services under such Contracts, Contractor shall, upon award, describe in detail how it will meet single point of contact responsibilities; identify what, if any, interaction exists between such Affiliates for each of the Module Contracts in question; and demonstrate how any competitive business goals of the individual Affiliates with respect to the Module Contracts in question will be resolved so as not to cause harm to the State or negatively impact the provisioning of Services to Customers. In addition, Contractor agrees to meet in good faith with the State to discuss potential efficiencies and savings that Contractor could make available to the State as a result of such circumstances.

55. UNANTICIPATED TASKS

- a. Any services, functions or responsibilities not specifically described in this Contract that are consistent with industry standards, an inherent, necessary or customary part of the Services or are, consistent with industry standards, required for proper performance or provision of the Services in accordance with this Contract shall be deemed part of the Services and Contractor shall provide them as part of the Services without additional charge.
- b. In the event that any other work must be performed which was wholly unanticipated and is not specified in the Statement of Work, but which in the opinion of both parties is necessary to the successful accomplishment of the general scope of work outlined for particular Deliverable(s) and/or Service(s), the procedures outlined in this Section will be employed.
- c. For each item of wholly unanticipated work not specified in the Statement of Work, a Work Authorization will be prepared.
- d. It is understood and agreed by both parties to this Contract that all of the terms and conditions of this Contract shall remain in force with the inclusion of any such Work Authorization. Such Work Authorization shall in no way constitute a Contract other than as provided pursuant to this Contract and shall not in any way amend or supersede any of the other provisions of this Contract.
- e. Each Work Authorization shall consist of a detailed statement including justification of the need for the wholly unanticipated work, a description of the work to be accomplished by Contractor, the job classification or approximate skill level of the personnel to be made available by Contractor, an identification of all significant material to be developed by Contractor and delivered to the State, an identification of all significant material to be delivered by the State to Contractor, an estimated time schedule for the provision of the work by Contractor, completion criteria for the work to be performed, the name or identification of Contractor personnel to be assigned, Contractor's estimated work hours per person (and/or estimated subtotal of rates and charges per Deliverable(s) and/or Service(s)) required to accomplish the work, Contractor's billing rates per work hour per person (and/or estimate rates and charges per unit for Deliverable(s) and/or Service(s)) required to accomplish the work, and Contractor's estimated total cost of the Work Authorization.

- f. All Work Authorizations must be in writing prior to beginning work and signed by Contractor and the State. (See Attachment 5, Exhibit A-4 Work Authorization Form.)
- g. The State has the right to require Contractor to stop or suspend work on any Work Authorization pursuant to the "Stop Work" provision (Section 36) of this Contract.
- h. Personnel resources will not be expended (at a cost to the State) on task accomplishment in excess of estimated work hours required unless the procedure below is followed:
 - i. If, in the performance of the work, Contractor determines that a Work Authorization to be performed under this Contract cannot be accomplished within the estimated work hours, Contractor will immediately notify the State in writing of Contractor's estimate of the work hours which will be required to complete the Work Authorization in full. Upon receipt of such notification, the State may:
 - a. authorize Contractor to expend the estimated additional work hours in excess of the original estimate necessary to accomplish the Work Authorization (such an authorization will not be unreasonably withheld), or
 - b. terminate the Work Authorization, or
 - c. alter the scope of the Work Authorization in order to define tasks that can be accomplished within the remaining originally estimated work hours.

The State will notify Contractor in writing of its election within seven (7) calendar days after receipt of Contractor's notification. If notice of the election is given to proceed, Contractor may expend the estimated additional work hours. The State agrees to reimburse Contractor for such additional work hours.

56. NEED FOR CONTRACTOR SERVICES DUE TO EMERGENCY

- a. Contractor shall make every reasonable effort to assist the State in procuring use of Contractor Services compatible with that provided under this Contract to meet emergencies. The price and service levels for such compatible services shall be reasonably set by Contractor and, to the extent possible, shall be no greater than the Contract rates and at service levels substantially similar to those set forth in the Contract.
- b. The State, at its option, may accept or reject the use of emergency Equipment.

57. NON-EXCLUSIVE AGREEMENT

Nothing in this Contract shall be construed as a requirements contract or interpreted as preventing the State from obtaining, consistent with State policy, any portion, component, subset or all of the Services offered under the terms and conditions of this Contract, or any other services (analogous, similar, comparable or otherwise) from third parties, or providing the same to itself. Nor shall anything in this Contract be construed or interpreted as limiting the State's right or ability during the Term of this Contract to increase or decrease its demand for Services hereunder. To the extent the State, consistent with State policy, obtains from third parties, or provides to itself, replacement services for any of the Services hereunder, the amount to be paid to Contractor by the State for the remaining Services will be equitably adjusted downward, to the extent necessary, to reflect the portion of the Services that Contractor will not be providing or performing, regardless of whether such Services were priced individually or as a bundle with any of the remaining Services.

58. CHARGES

Contractor agrees that the State and any Customer are not subject to any minimum monthly usage charges for any Services contracted under this Contract.

- a. Contractor agrees that services not identified in this Contract may not be provided nor charged to the State or any Customer pursuant to this Contract, but that Contractor may use the invoicing process of this Contract so as to allow for invoicing of services not related to this Contract, provided that such items are clearly identified as not related to this Contract and Contractor otherwise complies with the requirements in the Contract related to invoicing.
- b. Contractor agrees that charges not identified in this Contract may not be assessed to the State or any Customer except in accordance with paragraph (a) of this Section.
- c. Invoices for all contracted Services shall not be subject to late payment charges prior to the Contract defined due date.
- d. Contractor agrees that the charges shall comply with Section 70 below.

59. SERVICE COSTS

Contractor shall provide a complete list of all Service and product descriptions accepted by the State under this Contract and correlate the Services to the associated costs in applicable attachment of this Contract. Cost will include all monthly recurring and usage charges, volume discounts, and non-recurring charges as applicable. Listed pricing will include all elements necessary to configure an instance of working Service (planning, application design, engineering, testing, wiring, termination, installation, and training) whether priced separately or bundled. Any no-cost items will be clearly identified with

applicable rate schedule. Contractor agrees that Service elements without associated pricing will be considered no charge items.

60. SERVICE TAXES, FEES, SURCHARGES, AND SURCREDITS

Service taxes, fees, surcharges, and surcredits identified in Section 5 of the Proposal may be charged under this Contract. The State reserves the right to verify and, if necessary, challenge, the application by Contractor of such service taxes, fees, surcharges, and surcredits with Contractor and the applicable regulatory authority. The State and authorized users of this Contract will be subject to service taxes, fees, surcharges, and surcredits that are mandated by the FCC, CPUC, and local jurisdictions to be recovered from end users of the applicable Service, as currently set forth in the RFP and as may hereafter be imposed by applicable federal, state, and local governmental entities where such service taxes, surcharges, and surcredits are mandated to be recovered from end users of the applicable Service. With respect to any service taxes, fees, surcharges, and surcredits that the FCC or CPUC has authorized service providers the discretionary right to collect from end users, Contractor shall provide written notice to the State of Contractor's intent to impose such items hereunder and a business justification (including reference to the underlying regulatory decisions). In addition, Contractor shall provide written notice to the State of: (i) the Service(s), location(s), and Customer(s) to be affected by such service taxes, fees, surcharges, and surcredits, (ii) the effective period of such items, (iii) a description of how such items are to be applied, and (iv) a description of how the accuracy of such items may be verified by Customers. Should the State consider the application of such items to be inappropriate, the State and Contractor shall meet and confer regarding the applicability of such items. If thereafter a dispute exists regarding the proper application of such items, the parties may resolve such disputes in accordance with Section 35. Either party may seek guidance or clarification from the applicable regulatory authority regarding the appropriate application of such items. If the application of such items is deemed inappropriate by the regulatory authority, the Contractor shall cease and/or revise the application of such items and, if appropriate, issue retroactive credits to the impacted Customer(s). Contractor agrees to notify DTS/ONS in writing sixty (60) days prior to the effective date of any additions or changes to such taxes, surcharges, or surcredits (including reference to the underlying regulatory decisions). Applicable taxes, surcharges, or surcredits will not be included in Service pricing but will be listed in appropriate pricing attachments to this Contract. All charges under this Contract are exclusive of applicable federal, state and local sales, use, excise, utility, and gross receipt taxes, other similar tax-like charges and surcharges. Contractor agrees to exempt the State and authorized users from all federal taxes as of the date Contractor receives a duly authorized and valid exemption certificate. Contractor will provide the State the exemption certificate that complies with the requirements of the Internal Revenue Code and Regulations; see Internal Revenue Regulations section 49.4253-11 and IRS Publication 510 (2/2004). Contractor agrees, for the purpose of exemption, that the State will act as the authorized agent for this Contract in submitting a single exemption request on behalf of all state agencies. The State will make available the certification form to authorized local government users. Local government entities will be responsible for submitting exemption requests to Contractor.

61. ADMINISTRATIVE FEE

Contractor agrees to pay DTS/ONS an administrative reimbursement as required and established by the DTS/ONS. The administrative reimbursement shall be used to fund only DTS/ONS activities, or DTS/ONS funded State offices and activities. DTS/ONS's objective is not to increase the administrative fee associated with any existing Service or establish an administrative fee associated with any new Service if when combined with Contractor's Contract rate for the Service the administrative fee raises the total price for the Service to a level that is non-competitive with similar services available in the telecommunications industry. Notwithstanding the foregoing, in all events DTS/ONS shall be entitled to an administrative fee increase equal to the Consumer Price Index (CPI) over the relevant Contract Term should an increase be required to fund DTS/ONS activities or DTS/ONS funded State offices and activities. The CPI is published by the U.S. Department of Labor, Bureau of Labor Statistics. For this Contract the following will be utilized: the CPI-U Index; not seasonally adjusted; US city average area, all items series adjusted annually. Until the Contract has been awarded and the Contractor rates determined, DTS/ONS is unable to determine administrative fee rates that will be applied on any service or services. Accordingly, and on behalf of DTS/ONS, Contractor will bill, collect and remit a Contract administrative fee. The administrative fee may be applied to any and all contracted Services offered under this Contract. This fee shall be determined by DTS/ONS and shall be included within the amount charged to those agencies obtaining Services pursuant to this Contract. The administrative fee reimbursement amount shall appear on the monthly detailed fiscal management reports referenced in this Contract to be delivered to DTS/ONS.

- a. Contractor shall bill, collect and remit a check or electronic funds transfer notification based on the amount billed for this administrative fee to DTS/ONS on a monthly basis at no additional cost. The administrative fee shall be paid to DTS/ONS no later than the 30th of the month, for the amount billed two months preceding. Contractor shall pay a late payment fee on any such administrative fees not paid to DTS/ONS when due in accordance with the Statement of Work. The fee will be based on DTS/ONS costs to manage this Contract as well as perform other mandated functions and may be adjusted annually or as otherwise deemed necessary by DTS/ONS, based on fiscal year projected requirements, upon reasonable notice to Contractor.
- b. Contractor agrees to provide monthly fiscal management reports identifying Services in accordance with this Contract.

62. INVOICES AND PAYMENTS

The consideration to be paid Contractor, as provided in this Contract, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel and per diem, unless otherwise provided in this Contract or a writing executed by the State. Unless otherwise specified, invoices shall be made available in accordance with this Contract. Invoices shall include the information set forth in this Contract and shall otherwise be consistent with the provisions of this Section and this Contract. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable, along with other taxes, fees, surcharges, and surcredits that are required to be separately itemized. Any approved discretionary service taxes, fees, surcharges, and surcredits may be separately identified on each invoice as applicable. In addition, each invoice shall be in the form specified by the State (including whether

issued as a single, aggregate invoice or separate invoices for different Services or entities) and shall (i) comply with all applicable legal, regulatory and accounting requirements, (ii) allow the State to validate volumes and charges, (iii) permit the State to chargeback internally, and (iv) meet the State's billing requirements in accordance with this Contract. Invoices with a name other than that established in the original Contract (including approved subcontractors or Affiliates) cannot be paid prior to execution of a Contract Amendment. The data underlying each invoice shall also be delivered to the State electronically in a form and format specified in this Contract but compatible with the State's accounting systems. When provision is made for a testing period preceding acceptance by the State, the date of acceptance shall mean the date the Equipment, Software or Service was accepted by the State during the specified period. The backbilling limitation of charges shall be controlled by Government Code Section 911.2. Should the State or any authorized user dispute, in good faith, any portion of the amount due, the State or such authorized user shall notify Contractor in writing of the nature and basis of the dispute as soon as possible. In the event the dispute is not resolved prior to the due date, the State or such authorized user may deduct the disputed amount from the amount due. No late payment charge shall apply to the disputed amount. The parties agree to use their best efforts to resolve disputes in a timely manner.

63. CONTRACTOR COMMITMENTS AND REPRESENTATIONS

Any written commitment by a duly authorized representative of Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill any such commitment shall render Contractor liable for performance deficiency charges or other damages due to the State as set forth herein. Such written commitments include but are not limited to (1) any warranty or representation expressly made by Contractor as to Deliverables, Service, Equipment or Software performance, total System performance, or other physical design or functioning characteristics of a Machine or Software System, (2) any warranty or representation expressly made by Contractor concerning the characteristics of the items described in (1) above, made in any publication, drawings, or specifications accompanying or referred to in the Contract, and (3) any written notification of or affirmation or representation as to the above which is made by Contractor in or during the course of negotiations and which is incorporated into a formal amendment to the Contract.

64. SERVICE TO PUBLIC ENTITIES

In accordance with Government Code Section 11541, Contractor agrees to provide Service to all public Agencies in the State pursuant to this Contract and hereby acknowledges that the State is not responsible for payment for Services rendered these entities. Contractor agrees that it shall have no recourse against the State for any act or omission of the local entity, which arises from Contractor furnishing goods or Services pursuant to this Contract. Contractor understands and acknowledges that under this Contract the State neither promises nor guarantees any minimum amount of revenue for Contractor or minimum amount of Deliverables or Services to be purchased.

65. [INTENTIONALLY OMITTED]

66. EXISTING EQUIPMENT

Contractor agrees to accommodate all State and other authorized users which currently utilize existing Equipment for the CALNET I agreement that could be used with Contractor's proposed Services by (a) supporting the use of such existing Equipment, or (b) modifying or replacing such existing Equipment at no cost to the State or Customers during Transition. Any replacement or modification to existing Equipment shall require approval from DTS/ONS or the affected Customer and shall be of similar or better quality that will function the same as, or better than, the existing Equipment.

67. CUSTOMER PREMISE EQUIPMENT

Contractor agrees to provide an option to obtain the necessary Customer Premise Equipment ("CPE") required in order to receive Services, including any CPE exclusively available from Contractor. In addition, to the extent that the Services include CPE or Equipment exclusively available from Contractor, the State may, at its sole option, procure alternative equipment from Contractor or from a manufacturer or authorized representative and use such alternative Equipment in connection with the Services, provided that it meets the functional and technical specifications required to obtain the Services.

68. AVAILABILITY OF REFRESHED TECHNOLOGY AND ADDITIONAL SERVICE ITEMS

Contractor shall evolve, supplement and enhance the Services in the normal course of business during the Term, both to keep pace with and utilize technological advancements and improvements in the method of delivering telecommunications-related services (and the pricing thereof), and to keep pace with changes and additions to the Services and products offered by Contractor (and the pricing thereof). Contractor also acknowledges that the telecommunications environment is critical to the State's business success, that the State's needs and requirements with regard to the telecommunications environment may evolve and change over time, and that the need for enhanced or modified functionality may arise from time to time. Therefore, from time to time during the Term, but not less frequently than once each Contract year, Contractor shall meet and confer with the State, and either party may suggest any reasonable and appropriate changes or additional Service items needed or that might be considered to keep pace with and take advantage of the latest and most useful technological advancements and improvements in Contractor's performance of the Services (collectively, "Enhancements"). Contractor agrees that when such Enhancements substitute, replace or improve Deliverables or Service items already being received by the State (e.g., network backbone upgrades that generally benefit all users of the network and are not

specifically requested by the State), Contractor will make such Enhancements available to the State under this Contract at no additional cost to the State. When the Enhancements do not substitute, replace or improve Deliverables or Service items already being received by the State under this Contract, but instead add to the Deliverables or Service items additional material functionality and features, Contractor will make such Enhancements available to the State under this Contract and provide competitive pricing therefore unless Contractor in its sole discretion determines that the Enhancement would be provided at no additional charge. With each proposal to add an Enhancement, Contractor will provide a business case that includes potential users and market analysis that illustrates competitive pricing, if applicable. The State, in its sole discretion, shall determine whether to approve of such Enhancement's inclusion under this Contract. If the State chooses to proceed hereunder, the State and Contractor will negotiate in good faith to agree on the additional terms and conditions, if any, under which the Enhancement will be added to this Contract through amendment and Contractor shall update any applicable marketing plans used in connection with the provision of the Deliverables and Services hereunder. Contractor understands that DTS/ONS is fully responsible for this approval and agrees, absent written approval from DTS/ONS, Enhancements cannot be added to this Contract at the request of any State or non-State Agency. Consistent with and without limiting anything set forth in Section 57, nothing in this Section shall prohibit the State from pursuing or obtaining the same or similar Enhancements with or from its other providers of Module Services or requiring that certain Enhancements may only be obtained from certain providers of Module Services.

69. PRICING AND SERVICE REVIEW

For the purpose of maintaining competitiveness throughout the Term, Contractor agrees to joint review of its pricing and Service functionality annually, or more frequently (not to exceed three (3) such reviews in any twenty-four (24) month period unless otherwise agreed by the parties) at the State's request, to ensure the State and its Customers will receive cost-competitive and technologically competitive Services throughout the Term. Contractor agrees that written amendments to this Contract to reduce statewide rates and introduce technological Service improvements may be submitted throughout the Term.

70. "MOST FAVORED NATION" STATUS OF STATE

Contractor agrees to give the State and Customers of this Contract "Most Favored Nation" status, in that Contractor agrees that no other similarly situated public customer of Contractor or any of its Affiliates will receive rates for a substantially similar service, or suite of services, offered under substantially similar terms and conditions that are lower than the statewide rates provided hereunder when the volume of business from the other public customer is equal to or less than the volume of business the State delivers under this Contract. Contractor agrees to promptly bring to State's attention instances in which other public customers of Contractor or any of its Affiliates may receive lower rates for substantially similar services. If Contractor or its Affiliates offer lower rates to any other public customer for the same or a substantially similar service, or suite of services, offered under substantially similar terms and conditions, Contractor shall adjust the State's rates prospectively to match or beat such rates. If Contractor offers a bundled package of Deliverables and/or Services under substantially similar terms and conditions to other

public Customers at a rate lower than the rate(s) charged to the State for such Deliverables and/or Services provided under this Contract, the State reserves the right to order a similarly bundled package of Deliverables and/or Services at such lower rate. At the end of each Contract year, an executive level officer of Contractor shall certify in writing to the State that Contractor has complied with this provision. If Contractor is not in compliance with this Section, Contractor and the State shall make adjustments and/or payment as necessary and described above and in Section 50. Nothing herein shall be construed to require Contractor to offer, provision or sell Services in a manner that conflicts with applicable laws or regulations.

Rates established through the ICB and IPR processes described in Sections 71 and 72 respectively are exempt from this "Most Favored Nation" qualification.

71. INDIVIDUAL CASE BASIS (ICB) PRICING

The State requires Contractor to list all Services in Attachment 3 and all Service pricing in Attachment 4. However, the State recognizes there may be instances where Contractor cannot anticipate or establish a specific cost for a Service because of issues such as complexity, facility availability, or other Service provisioning requirements. The State will consider the use of Individual Case Based Pricing only in specific situations and under the parameters detailed below:

- a. Contractor will provide documentation to the State that demonstrates that its ICB Pricing is developed through its corporate ICB process and is consistent with CPUC and other appropriate regulatory guidelines as applicable. Contractor further affirms that ICB Pricing opportunities will be offered in a consistent manner to all eligible Customers.
- b. ICB Pricing is a Customer specific pricing methodology approved by applicable regulatory agencies. The following components are examples of elements to be considered in developing an ICB Pricing methodology:
 - i. Capital investment required by Contractor, including the pro-rata share of existing capital and new incremental capital dedicated to the opportunity.
 - ii. Related expense to provide the Service, including expense such as installation, repair, billing, monitoring, on-going maintenance and other business and operating expense.

Contractor shall provide to the State a description of the components of its approved ICB Pricing methodology as part of the documentation required under subsection (a), above.

ICB Prices will only be offered if the prices are determined by Contractor and the State to be financially feasible and in the interest of the Customer. In the event a Customer requests Service that Contractor deems financially unfeasible, Contractor will provide the rationale for its decision and discuss other potential Service options with DTS/ONS before advising the Customer of the unavailability of ICB Prices.

ICB Pricing that is defined as a Managed Project shall be consistent with the terms and conditions of this Contract.

ICB Pricing for regulated entities is supported by the following CPUC decisions, which are provided for reference herein:

General Order 96-A
CPUC Decision 91-07-010
CPUC Decision 94-09-065
CPUC Decision 96-03-020

- c. Consistent with DTS/ONS Contract oversight responsibilities, the following ICB Pricing conditions will apply:
- i. In the event that CPUC or other appropriate regulatory guidelines (as applicable) regarding pricing methodology, or Contractor's corporate processes relating thereto, are materially revised, Contractor shall obtain approval from DTS/ONS prior to presenting ICB Pricing opportunities utilizing the changed guidelines or corporate processes applying such changed guidelines.
 - ii. DTS/ONS approval is required for ICB Pricing to become effective. DTS/ONS has the ability to disapprove any ICB Pricing offered.
 - iii. Contractor will provide DTS/ONS with monthly ICB Pricing documentation in the form of a report that identifies: (a) Customer, (b) location, (c) Service, (d) pricing, and (e) whether the offer was accepted or rejected.
 - iv. Authorized users may not sign up for ICB Pricing that extends beyond the Term of this Contract, including any extension period(s).
 - v. All Services with ICB Pricing shall be identified in Attachments 3 and 4.
 - vi. DTS/ONS may request that Contractor evaluate an ICB Pricing opportunity for a Customer.
 - vii. DTS/ONS may request an explanation of ICB Pricing presented to or implemented for Customers of this Contract.
 - viii. In the event that a Customer elects to terminate Service(s) subject to ICB Pricing for reasons other than (1) a Contractor default, or (2) circumstances outside such Customer's reasonable control, such Customer shall be liable to Contractor for any unrecovered amortized capital costs originally identified in the approved ICB Pricing documentation, calculated using Generally Accepted Accounting Principles.

72. INDIVIDUAL PRICE REDUCTIONS (IPR)

In accordance with this Contract, Contractor shall be given the opportunity within the terms of this Contract to provide Individual Price Reductions (IPR) consistent with State policy (Management Memo 04-08 or updated versions or replacements), Section 57 and Section 70. Contractor may offer IPR to Customers.

73. FEDERAL UNIVERSAL SERVICE FUND

Federal Grant programs are available to schools and libraries under the Universal Service Fund. This program, also referred to as E-rate funding, provides supports to schools and libraries in accessing telecommunications services. To the extent such programs are applicable to the Services under this Contract, as determined by the State, or required by law, Contractor agrees to:

- a. Provide Contract telecommunications Services to public entities qualified for Universal Service Fund Support;
- b. Be certified as a USAC;
- c. Meet Federal requirements for timeliness and accuracy in processing E-rate and other USAC program request and invoicing; and
- d. Ensure that DTS/ONS has pre-approved the use of Contract Services by Customers otherwise qualified for the Federal Universal Service Fund.

74. TITLE TO EQUIPMENT

Title to Equipment, accessories, and devices provided under this Contract shall not vest in the State, unless such items are purchased by the State. All devices and accessories furnished by Contractor hereunder, except those purchased by the State, shall accompany the Equipment when returned to Contractor.

75. UNLAWFUL USE

Customer will not use any Service for any unlawful purpose. Without limiting any other remedy specified in this Contract, Contractor reserves the right to take any action it deems necessary to prevent unlawful use and to control fraudulent use. Such actions by Contractor may include, but are not limited to, blocking certain traffic, refusing to accept calling card, collect calling and or third number calls, or discontinuing provision of Service to the End-User or canceling the End-User's account.

76. TRANSITION-IN PLAN FOR TURNOVER OF CONTRACTOR SERVICES

- a. Transition-In Plan. Contractor shall prepare and deliver to the State, for the State's review, comment and approval, a Transition-In Plan for transitioning the provision of services pursuant to CALNET I to the provision of Services pursuant to this CALNET II as set forth in this Contract. To the extent Contractor deems appropriate, or as otherwise requested by the State, Contractor shall design the Transition-In Plan to use a phased-transition strategy.
- b. No Disruption. Contractor shall, at Contractor's sole expense, implement the Transition-In Plan, provide all Contractor labor resources necessary to implement the Transition-In Plan and perform all tasks in accordance with the approved transition plan schedule, so that there is no disruption or discontinuity in CALNET service from the incumbent contractor to Contractor for the Transition, to the extent practicable, and to avoid or minimize, to the extent practicable, any period whereby the State is subject to charges pursuant to both CALNET I and this CALNET II.
- c. Non-Compliance. If the State determines that Contractor has not complied, or is unlikely to comply, with Transition or turnover requirements identified in the Transition-In Plan, and such non-compliance was a direct result of Contractor, subcontractors or suppliers, and not due to any other third party or situations outside the control of Contractor, the State shall give written notice to Contractor of non-compliance. After such notice, Contractor shall provide to the State the services of all necessary additional Contractor personnel to accelerate performance as may be required or necessary to timely achieve compliance or, if Contractor has already failed to comply, achieve compliance within a re-adjusted time frame established by the State. Contractor shall have seven (7) calendar days, or longer if agreed to by the State in writing, to achieve compliance. For each material Transition or turnover requirement not completed after the notice of non-compliance period, the State shall be entitled to invoice Contractor for up to \$2,000 per day for each material deficiency, not to exceed \$10,000 per day for all deficiencies until Contractor is in material compliance with the requirements of the Transition-In Plan. Any duties and obligations of Contractor under the Contract necessary to complete Transition that have not been performed at the time of Contract termination shall holdover and continue in effect beyond any expiration or termination of the Contract Term and the State's rights and remedies for Contractor's failure to comply shall be as set forth in Sections 20 and 22. The Contractor may exercise its dispute rights under Section 35 above in the event that Contractor disagrees with the State's application of this Section; however, pending final resolution of any dispute, Contractor shall diligently proceed without disruption or delay with the performance of the Transition-In Plan and the provisioning of all Services.

77. DISENTANGLEMENT (TRANSITION-OUT)

- a. Term of Disentanglement. The Disentanglement process shall begin on the earlier of the following dates (as applicable, the "**Disentanglement Commencement Date**"): (a) as elected by the State, up to sixty (60) calendar days prior to the end of the Term that the State has not elected to extend pursuant to Section 81 or has already extended fully as permitted under Section 81; (b) the date a Notice of Termination is delivered pursuant to Section 19 or 20; or (c) the State's election pursuant to Section 57 to obtain any portion, component, subset or all of the Services

offered under the terms and conditions of this Contract, or any other services (analogous, similar, comparable or otherwise) from third parties, including other Module Contractors, or to provide the same to itself. Contractor shall provide Disentanglement Services until it has completed the obligations of this Section. Contractor's obligation to continue to provide the affected Services shall continue until the earlier of (i) completion of a transition to a new service provider as provided in this Section, or (ii) eighteen (18) months after the effective date of any termination or expiration. During Disentanglement, Contractor shall continue to provide Service(s) in a manner consistent with Contractor's provision and performance of such Service(s) during the period such Service(s) were provided to the State hereunder.

- b. Disentanglement (Transition-Out) Plan. Contractor shall prepare and deliver to the State, as set forth in this Contract, a Disentanglement Plan, or Transition-Out Plan, for transitioning the provision of Services, or portion thereof, under this Contract to the State's alternate service provider pursuant to RFP SECTION 6.1.14.2, Transition-Out Requirements of Termination in the event of: (i) the expiration or termination of the Term; or (ii) the State's election during the Term pursuant to Section 57 to obtain any portion, component, subset or all of the Services offered under the terms and conditions of this Contract, or any other services (analogous, similar, comparable or otherwise) from third parties, including other Module Contractors, or to provide the same to itself. Contractor shall implement the Transition-Out Plan and perform all tasks in a timely manner, so that there is no disruption or discontinuity in CALNET II service from Contractor to the State or State's designee for the Transition-Out to the extent practicable. Contractor shall participate in meetings with the State and the State's alternate service provider (e.g., CALNET III) as reasonably required by the State in planning for a transition and implementing the Transition-Out Plan.
- c. Disentanglement Services. Subject to the performance by the State and any subsequent provider of services similar to the Services of all actions reasonably expected of each party in connection with the transition, Contractor shall cooperate fully with the State and third parties and shall take all actions reasonably requested by the State or necessary to accomplish, by no later than eighteen (18) months after: (i) the effective date of expiration or termination of the Term or (ii) the State's election during the Term pursuant to Section 57 to obtain any portion, component, subset or all of the Services offered under the terms and conditions of this Contract, or any other services (analogous, similar, comparable or otherwise) from third parties, or to provide the same to itself, a smooth, complete transition of responsibility for the Services being terminated from Contractor to the State, or to any replacement provider designated by the State (a "**Disentanglement**"), with no material interruption of or adverse impact on the State in any way, including on the Services. In the event the State elects to terminate any Service (but not all Services in the aggregate) pursuant to the terms hereof, Contractor shall perform its Disentanglement obligations hereunder to the extent applicable to the Service or Services being terminated. Contractor's obligations hereunder regarding the collection and payment to the State of administrative fees shall continue throughout Disentanglement.
- d. Non-Compliance. If the State determines that Contractor has not complied, or is unlikely to comply, with Disentanglement or Transition-Out requirements identified in the Transition-Out Plan, and such non-compliance was a direct result of Contractor, subcontractor or supplier, and not due to any third party or situations outside the control of Contractor, the State may give written notice to Contractor of non-compliance. After such notice, Contractor shall provide to the

State all necessary additional Contractor personnel to accelerate performance as may be required or necessary to timely achieve compliance or, if Contractor has already failed to comply, achieve compliance within a re-adjusted time frame established by the State. Contractor shall have seven (7) calendar days, or longer if agreed to by the State in writing, to achieve compliance. For each material Disentanglement or Transition-Out requirement not completed after the notice of non-compliance period, the State shall be entitled to invoice Contractor for up to \$2,000 per day for each material deficiency, not to exceed \$10,000 per day for all deficiencies until Contractor is in material compliance with the requirements of the Transition-Out Plan. The Contractor may exercise its dispute rights under Section 35 above in the event that Contractor disagrees with the State's application of this Section; however, pending final resolution of any dispute, Contractor shall diligently proceed without disruption or delay with the performance of the Transition-Out Plan.

- e. Charges. All Disentanglement Services performed by Contractor during the transition shall be performed by Contractor at no additional cost to the State beyond what the State would pay for the Services. Unique services requested by the State will be priced as agreed upon by the parties.
- f. Delivery of State Data. Contractor shall provide to the State all State data and documentation and other information reasonably requested by the State in connection with the transition that is sufficient to enable the State, or another reasonably competent service provider, to fully assume the provision of any terminated Services. Except as Contractor is otherwise required to retain such data under this Contract or by law, Contractor shall destroy all copies of State data not turned over to the State.
- g. Inventory. To the extent applicable to the Services provided by Contractor hereunder, Contractor shall provide to the State as complete and accurate an inventory as is reasonably practicable of all Software, data, Equipment, materials, third party licenses, third party leases, and third party contracts used to provide the Services, as well as the location thereof, entities serviced under this Contract by such items, and such other information regarding such items as the State reasonably requests.
- h. Transfer of Assets. Effective as of the date of termination, Contractor shall, subject to Section 87, use commercially reasonable efforts to convey to the State (or its designee) such physical assets as the State may, in its sole discretion, select from among those assets that are onsite CPE and substructure not already fully paid for by the State and used by Contractor solely in or for the provision of Services to the State, excluding those assets expressly agreed upon by the parties in writing from time to time, at a price consisting of the aggregate net book value of such selected assets at that time, less the amount(s) already paid by the State for such assets.
- i. Transfer of Leases, Licenses and Contracts. Effective as of the date of termination, Contractor, at its expense, shall use commercially reasonable efforts to convey or assign to the State (or its designee) such leases, licenses, and other contracts as the State may, in its sole discretion, select from among those directly associated with the use of properties, Software, or other goods or services by Contractor that were specifically obtained, licensed or purchased in order for the State to obtain Services. Notwithstanding anything to the contrary in this Contract, Contractor shall be responsible for the satisfaction and performance of all obligations (including all financial obligations) under any such leases, licenses, and other contracts that may be assigned or conveyed to the State (or its designee) with respect to periods prior to the date of any such conveyance or assignment.

- j. License. Except as otherwise provided herein, Contractor shall use commercially reasonable efforts to assign or license to the State (or its designee) whatever rights Contractor possesses at the time of Disentanglement with regard to Software, materials and other items that are needed in order to allow the State (or its designee) to continue to perform and receive the benefit of the Services. To the extent allowed by the applicable owner or licensor and to the extent the following are accessible by Contractor, Contractor shall provide the State with a full and complete copy of each such item that constitutes Software, in such forms and media as reasonably requested by the State, together with all object code, source code, and then-available documentation thereto.

78. REPORTS, DATA AND INVENTORY

Contractor shall provide all reports required by this Contract or otherwise reasonably requested by the State. In addition to performing its obligations under Sections 77.f and 77.g as part of Disentanglement Services, upon the State's reasonable request, at reasonable intervals and for any reason related to the Contract and Services provided under the Contract, during the Term of the Contract, Contractor shall: (a) provide to the State all State data and documentation and all other information reasonably requested by the State; and (b) Contractor shall provide to the State as complete and accurate an inventory as is reasonably practicable of all Deliverables and Services provided under the Contract, including Software, data, Equipment, materials, third party licenses, third party leases, and third party contracts used to provide the Services, as well as the location thereof, entities serviced under this Contract by such items, and such other information regarding such items as the State reasonably requests.

79. DISASTER RECOVERY AND SECURITY PLAN

Within ninety (90) calendar days after the Effective Date, Contractor shall develop and submit to the State, for the State's review, comment and approval, a detailed disaster recovery and security plan applicable to all of the Services ("**Disaster Recovery and Security Plan**"); provided, however, that to the extent any portions of the Disaster Recovery and Security Plan are developed prior to the expiration of such ninety (90) day period, Contractor shall deliver such portions to the State as soon as they are so developed. Except where agreed to by the State, such detailed Disaster Recovery and Security Plan shall be consistent in all respects with the requirements (if any) set forth in this Contract (including the RFP) and the Disaster Recovery and Security processes submitted by Contractor as part of the Proposal. Immediately upon the State's approval of the Disaster Recovery and Security Plan, Contractor shall implement the same in accordance with its provisions. Contractor shall ensure that the Disaster Recovery and Security Plan, and the corresponding disaster recovery and security Services provided by Contractor, shall be consistent with any limitations imposed by law and shall be appropriate and comprehensive, using industry best practices and methods and state-of-the-art technology, to at all times ensure the availability, security, integrity and confidentiality of the Deliverables and Services. At least thirty (30) calendar days prior to each anniversary of the Effective Date, Contractor shall revise the Disaster Recovery and Security Plan as appropriate to reflect any changes to the State's information-technology

and/or telecommunications environment or requirements and submit it to the State for review, comment, and approval.

80. BENCHMARKING

Beginning twelve (12) months after the Effective Date and annually thereafter until any termination or expiration, the State may engage an independent third party (a **"Benchmarker"**), to benchmark Service(s), suite(s) of Services, Service Level Agreements, and/or the charges (other than ICB Pricing and IPR) hereunder. The cost for such benchmarking shall be equally shared by the State and Contractor. The selection of the Benchmarker shall be made by the State, subject to Contractor's approval, such approval not to be unreasonably withheld. In addition to the annual benchmarking activity, the State shall have the right to engage, at the State's own expense, a Benchmarker to conduct additional benchmarking activities prior to any termination or expiration of the Contract, provided that each such additional benchmarking activity is conducted no sooner than six (6) months after the annual benchmarking activity. The State and Contractor will discuss and determine in advance the scope, methodology, relative comparisons and execution for each benchmarking process (the **"Benchmarking Process"**). Each Benchmarking Process will be conducted, and the results documented, by the Benchmarker in a commercially reasonable manner and in accordance with the applicable Benchmarking Process. The State and Contractor will review the results of each benchmark and determine if such benchmark results show that the charges for the benchmarked Service(s) are less favorable than the most favorable of the prices charged by any other service provider examined by the Benchmarker for similarly situated service(s) or a similar suite of services (the **"Benchmarking Standard"**). In comparing charges, the charges under this Contract shall be considered exclusive of the Administrative Fee. If the benchmark results show a variance between the charges for the benchmarked Service(s) charged by Contractor hereunder and the Benchmarking Standard by greater than five percent (5%), then Contractor shall reduce its charges hereunder such that Contractor's total charges for the benchmarked Service(s) are within five percent (5%) of the Benchmarking Standard. Notwithstanding the foregoing, Section 70 shall apply as appropriate. The parties agree that in no event shall the results of a benchmarking result in the increase of Contractor's charges.

81. OFFER; TERM

From the date that Contractor executes this Contract (**"Signing Date"**) until such time as the State executes this Contract and DTS/ONS approves the award of this Contract to Contractor, and as such process is further described herein, this Contract constitutes the irrevocable, firm offer by Contractor to provide the Services to the State for the charges in accordance herewith. This Contract shall not be binding or of any legal force or effect on the State until the authorized execution of this Contract by the State and such approval by DTS/ONS (**"Effective Date"**). Notwithstanding the foregoing, from the Signing Date until the Effective Date, Contractor shall actively continue planning and working with the State to ensure the timely completion of all tasks necessary and sufficient to prepare for and achieve a smooth and seamless transition of the services related to the ongoing operation, support, and maintenance of the State's infrastructure related to Services hereunder that is from the State and its current third party

service-providers to Contractor. The Term of this Contract shall commence on the Effective Date and shall continue until the end of the fifth (5th) anniversary of the Effective Date (the “Term”). In addition, the State may, at its sole option, elect to extend the Term for up to two (2) additional periods of one (1) year each. The State may exercise its option to extend by giving written notice of extension to Contractor prior to expiration of the Term. Contractor shall provide a reminder letter to the State ninety (90) calendar days prior to the end of the Term and each extension thereof if the State shall not have previously provided written notice to Contractor of its intent to extend the Contract prior to such dates.

82. SUBCONTRACTORS

Except as reflected in Contractor’s Proposal, Contractor shall not subcontract all or any part of the Service without the prior written consent of the State, which will not be unreasonably withheld; provided, however, that Contractor may subcontract for internal infrastructure support, not specifically for this Contract, without notice to or consent from the State. Each subcontractor will perform only the specific Services described with regard to such subcontractor in a written request submitted by Contractor to the State when seeking such consent; and no change may be made to the specific Services performed by a particular subcontractor, and no substitution, replacement, or change of subcontractors may be made, without the advance written consent of the State, which will not be unreasonably withheld. All performance of Services by each subcontractor shall at all times be in accordance with the terms and conditions of this Contract. Contractor covenants that its arrangements with subcontractors shall not prohibit or restrict any such subcontractor from, at any time, entering into direct agreements with the State. The State’s consent with respect to Contractor’s use of a particular proposed subcontractor, shall be given or withheld in writing within Contractor’s reasonably requested timeframe, and, if such consent is withheld, the State’s notice thereof to Contractor shall set forth the reasons for such withholding of consent. If the State determines in good faith and in a commercially reasonable manner that the performance or conduct of any subcontractor is unsatisfactory, the State may notify Contractor of its determination in writing, indicating the reasons therefore, in which event Contractor shall promptly take all necessary actions to remedy the performance or conduct of such subcontractor or to replace such subcontractor by another third party or by Contractor personnel. Contractor shall be solely and exclusively responsible for supervising the activities and performance of each subcontractor. Contractor and each such subcontractor shall be jointly and severally responsible for any act or omission of such subcontractor engaged to provide Deliverables and Services under this Contract. Notwithstanding the fact that a subcontractor may be the party actually performing a particular Service or providing a particular Deliverable hereunder, Contractor shall at all times: (i) constitute the primary obligor for all of Contractor’s duties and obligations hereunder; and (ii) be liable and responsible as a principal for the performance of all of the duties and obligations of Contractor hereunder that Contractor may elect to subcontract to any of its subcontractors or to any other third party.

83. DE MINIMIS SERVICE REQUESTS

Notwithstanding anything to the contrary provided in this Contract, if (i) the DTS/ONS at any time during the Term requests services, products, or resources from Contractor and the parties cannot agree as to whether such services, products, or resources are included as part of the Services offered under this

Contract, and (ii) the financial impact on Contractor of satisfying such request is less than Twenty-Five Thousand Dollars (\$25,000.00), then to the extent that the cumulative and aggregate amount of all such services, products, or resources so provided does not result in a financial impact on Contractor in excess of One Hundred Thousand Dollars (\$100,000.00) during any contract year: (a) such failure to agree shall not be deemed a disagreement; (b) such request shall be deemed a request for Services; and (c) all such services, products, or resources shall be provided to the State by Contractor in accordance with the terms of this Contract.

84. GOVERNANCE

- a. Before communicating any interpretation of this Contract that the State or any Customer is or may be in violation or breach of this Contract to any entity receiving, or eligible to receive, Deliverables or Services under this Contract, Contractor shall first provide notice of such interpretation to DTS/ONS.
- b. Committees and Meetings. During the Term, representatives of the State and Contractor shall meet periodically or as requested by the State to discuss matters arising under this Contract, including any such meetings provided for the Transition-In Plan. Contractor shall bear its own costs in connection with the attendance and participation in such meetings. Such meetings shall include, at a minimum, the following:
 - i. Operations. At least monthly, an operations committee shall meet to review Contractor's performance hereunder and any reports, any planned or expected activities and changes that might impact performance, and such other matters as appropriate.
 - ii. Management. At least quarterly, a management committee shall meet to review Contractor's overall performance hereunder and any reports, progress on the resolution of any issues, to provide a strategic perspective for the State's telecommunication requirements, and such other matters as appropriate.
 - iii. Executive. At least semi-annually, an executive committee shall meet to review Contractor's overall performance hereunder and the ongoing provision of the Services.

85. SECURITY AND POLICIES

In addition to any other requirements in the Contract, at all times during the Term, Contractor shall provide all Services, use all resources related thereto, and use, operate, support, and maintain any Systems, in an appropriately secure manner and in accordance with the State's security requirements, policies, and procedures as communicated, modified, supplemented, or replaced by the State from time to time, in its sole discretion, by providing Contractor with a written copy of such revised requirements, policies, or procedures reasonably in advance of the date that they are to be implemented and effective ("Security Policies"). Contractor shall at all times take all reasonably necessary and appropriate action

with regard to the prevention, detection, and elimination, by all appropriate means, of fraud, abuse, and other inappropriate or unauthorized access to and use of Systems and the networks involved with the provision or receipt of Services, including the implementation and deployment network management and maintenance applications and tools, the use of appropriate encryption technologies, and other security-related Services. In addition, all Contractor personnel (including personnel of any subcontractors) shall be subject to, and shall at all times conform to, all of the State's policies, procedures, rules, and requirements regarding the protection of premises, materials, equipment, and personnel, as the State shall provide (in writing or electronically) in advance to Contractor. Contractor shall, and shall cause Contractor personnel and subcontractors to, fully comply with and abide by all such Security Policies provided in advance to Contractor at all times during the Term. Any violation or disregard of such Security Policies by an individual shall be cause for denial of access of such individual to the State's property. Contractor shall exercise due care and diligence to prevent any injury to person or damage to property while on the State's premises. The operation of Contractor vehicles or private vehicles of Contractor personnel on the State's property shall conform to posted and other regulations and safe driving practices. Vehicular accidents on the State's property and involving Contractor personnel shall be reported promptly to the appropriate State personnel. Contractor shall, and shall cause Contractor personnel and subcontractors, to not exceed (or attempt to exceed) the level of authorized access, if any, to any networks, computer or electronic data storage systems of the State that may be granted during the Term for purposes only of performing the Services hereunder.

86. NEWLY MANUFACTURED GOODS

All Goods furnished under this Contract shall be newly manufactured Goods; used or re-conditioned Goods are prohibited, unless otherwise agreed by the parties.

87. DOCUMENTATION

Contractor agrees to provide to the State, at no charge, a reasonable number of all nonproprietary manuals and other printed materials, as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Services, Equipment or Software provided hereunder, including any marketing information. Contractor agrees to provide additional Documentation at prices not in excess of charges made by Contractor to its other customers for similar Documentation. Contractor may, at its option, provide any such Documentation in electronic form, unless otherwise specified in this Contract.

88. RIGHTS IN WORK PRODUCT

- a. All inventions, discoveries, intellectual property, technical communications and records originated or prepared by Contractor pursuant to this Contract including papers, reports, charts,

computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "**Work Product**"), shall be Contractor's exclusive property. The provisions of this subsection a. may be revised in a Statement of Work.

- b. Software and other materials developed or otherwise obtained by or for Contractor or its Affiliates independently of this Contract or applicable purchase order ("**Pre-Existing Materials**") do not constitute Work Product. If Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other original elements of Pre-Existing Materials do not. Nothing in this Section 88 will be construed to interfere with Contractor's or its Affiliates' ownership of Pre-Existing Materials. Intellectual property rights embodied in the Pre-Existing Materials shall remain with Contractor, its Affiliates, and/or its suppliers or manufacturers, as appropriate.
- c. The State will have Government Purpose Rights to the Work Product as Deliverable or delivered to the State hereunder. "**Government Purpose Rights**" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "**Government Purpose Rights**" also include the right to release or disclose the Work Product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the Work Product may include, without limitation, State Contractors, California local governments, the U.S. federal government, and the State and local governments of other states. "**Government Purpose Rights**" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.
- d. The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by Contractor or jointly by Contractor and the State may be used by either party without obligation of notice or accounting.
- e. This Contract shall not preclude Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.

89. ELECTRONIC WASTE RECYCLING ACT OF 2003

Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

90. USE TAX COLLECTION

In accordance with Public Contract Code Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of Public Contract Code Section 10295.1.

91. EXPATRIATE CORPORATIONS

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Sections 10286 and 10286.1, and is eligible to contract with the State.

92. DOMESTIC PARTNERS

The Contractor may elect to offer domestic partner benefits to the Contractor's employees in accordance with Public Contract Code Section 10295.3. However, the Contractor cannot require an employee to cover the costs of providing any benefits which have otherwise been provided to all employees regardless of marital or domestic partner status.

ATTACHMENT 2 – STATEMENT OF WORK, MODULE 1

This Statement of Work consists of the terms and conditions set forth in Sections 1, 3, 4, 5, 6, and 7 of the RFP and the Glossary (Appendix A to the RFP), the Proposal, and such other provisions of the Contract that describe the Deliverables and/or the Services, all of which are incorporated by reference into and considered part of this Statement of Work. This Statement of Work may be revised upon mutual agreement of the State and the Contractor in accordance with the terms of the Contract.

ATTACHMENT 3 – DESCRIPTION OF SERVICES, MODULE 1

Contractor shall provide to the State all of the Deliverables and Services described in the Statement of Work. Subsequent to the Notification of Intent to Award, Contractor shall provide herein a list of all Deliverables and Services (with descriptions, availability and unique identifiers, including features) available under the Contract for attachment to and inclusion in the Contract as Attachment 3. This list shall correspond with Attachment 4, Pricing, and shall be maintained on a public Web Site in accordance with this Contract. Such list may be modified by mutual agreement of the State and Contractor via a written amendment.

ATTACHMENT 4 - PRICING, MODULE 1

All Pricing language, along with details of Attachment 3, shall be developed by the Contractor and provided to the State subsequent to the Notification of Intent to Award for attachment to and inclusion in the Contract. Contractor shall provide herein a list of all Deliverables and Services rates, including features, available under the Contract as Attachment 4. The prices contained in this list shall correspond exactly with the cost tables submitted with the Bidder's Final proposal in response to Section 7, Costs. This price list shall be maintained on a public Web Site in accordance with this Contract. Such list may be modified by mutual agreement of the State and Contractor via a written amendment.

**ATTACHMENT 5
ORDERING AND INDIVIDUAL PRICE REDUCTION
NOTIFICATION DOCUMENTS, MODULE 1**

1. PROVISION OF DELIVERABLES AND SERVICES:

As described in the General Provisions, public Agencies may order Deliverables and Services under this Contract by issuing the appropriate Ordering Document form(s) as follows:

- Std. Form 20 for State Agencies. Also to be submitted by non-State Agencies for ordering all Deliverables and Services. (Exhibit A-1).
- Authorization to Order Under State Contract for non-State Agencies. To be submitted with initial order along with Std. Form 20. (Exhibit A-2).
- Std. Form 65 for State Agencies (Exhibit A-3).
- Work Authorization Form (Exhibit A-4).

Contractor will not commence provisioning Deliverables or Services for a given State or non-State Agency until Contractor receives a complete and accurate Std. Form 20, Authorization to Order Under State Contract, Std. Form 65, or Work Authorization, as applicable, or other authorized Service ordering mechanism for such entity. In addition, the provisioning of Deliverables or Services may be authorized via a web-enabled application in accordance with this Contract. The following Exhibits are made part of this Attachment 5:

EXHIBIT A-1 - STD. FORM 20

EXHIBIT A-2 - AUTHORIZATION TO ORDER UNDER STATE CONTRACT

EXHIBIT A-3 - STD. FORM 65

EXHIBIT A-4 – WORK AUTHORIZATION

2. INDIVIDUAL PRICE REDUCTIONS (IPR):

As described in Section 72 of the General Provisions and the RFP, Contractor may offer Individual Price Reductions (IPR) to Customers and prospective Customers. Contractor shall provide documentation to the State of any agreed upon IPR by issuing the appropriate Individual Price Reduction Notification Document as follows:

EXHIBIT A-5 – INDIVIDUAL PRICE REDUCTION NOTIFICATION

	TITLE	DATE
	SIGNATURE "This request complies with SAM Chapter 4500, and state telecommunications policies."	

*SAM = State Administrative Manual*STMM = State Telecommunications Management Manual*ATR = Agency Telecommunications Representative STD 20 Instructions

EXHIBIT A-2**AUTHORIZATION TO ORDER UNDER STATE CONTRACT**

_____ ("Contractor") and the State of California ("State") have entered into a Contract for California Integrated Information Network (CALNET) II ("CALNET II") Module 1 Services dated _____ ("Contract"), for a term of five years. The State may, at its sole option, elect to extend the Contract term for up to two (2) additional periods of one (1) year each. Pursuant to the Contract, which is incorporated herein by reference, any public agency as defined in Government Code Section 11541 is allowed to order services and products solely as set forth in the Contract ("Service(s)").

A non-State public Agency (herein "Non-State Agency") shall also be required to complete and submit this Authorization to Order Under State Contract (ATO) prior to ordering Services. A description of the Service(s), applicable rates and charges and the specific terms and conditions under which the Service(s) will be provided to a Non-State Agency are fully set forth in the Contract. Access to the Contract is available at www.stnd.dts.ca.gov.

_____ ("Non-State Agency") desires to order Service(s) and Contractor agrees to provide such Service(s) as identified in the State of California, Telecommunications Service Request (STD. 20), pursuant to the terms and conditions and rate tables contained in the Contract.

1. This ATO shall become effective upon execution by Non-State Agency, Contractor, and the Department of Technology Services, Statewide Telecommunications and Network Division (DTS/STND) ("Effective Date"). No Service(s) shall be ordered by Non-State Agency or provided by Contractor until this ATO has been executed by both parties and approved by DTS/STND.
2. With respect to Services ordered under this ATO, Non-State Agency hereby agrees to obtain such Services exclusively through the Contract and this ATO for a two (2) year commitment period starting from the Effective Date of the ATO, provided that such commitment does not extend beyond the Term of the Contract, including any extension periods. Any Services ordered subsequent to the end of the two (2) year commitment period shall not extend the two (2) year commitment period.
3. Upon expiration of the two (2) year commitment period, this ATO shall continue in effect through the remainder of the Term of the Contract, unless earlier terminated by Non-State Agency. The Non-State Agency will automatically continue to receive Services at Contract terms and conditions when the two year commitment period completes, and may add, delete or change Services without penalty or additional commitment periods (unless a specific Service requires a term per the Contract).
4. Subject to paragraph 5 below, Non-State Agency may terminate this ATO, for specific Service(s) or in total, prior to termination of the Contract by providing the Contractor with thirty (30) calendar days written notice of cancellation.
5. If Non-State Agency elects to terminate Service prior to completion of the two (2) year commitment period, a termination charge may apply. The termination charge may not exceed sixty-five percent (65%) of the Non-State Agency's average monthly bill for the disconnected Service(s) multiplied by the number of full months remaining in the two (2) year commitment period. If Service(s) are terminated after the two (2) year commitment period, no termination liability shall apply.

6. No termination charge will be assessed when Non-State Agency transfers Service(s) to a like Service offered under this Contract, or from one CALNET II Module to another, if the Contractor is the same for both Modules or is affiliated with the Contractor for the other Module.
7. By executing this ATO, Non-State Agency agrees to subscribe to and Contractor agrees to provide Service(s) in accordance with the terms and conditions of this ATO and the Contract. Within seven (7) business days after execution of this ATO by Non-State Agency and Contractor, Contractor shall deliver this ATO to DTS/STND for review and approval.
8. The DTS/STND will provide Contract management and oversight, and upon request by the Non-State Agency or Contractor, will advocate to resolve Contract service issues. The ATO and any resulting STD. 20 is a Contract between the Non-State Agency and the Contractor. The State will not represent the Non-State Agency in resolution of litigated disputes between the parties.
9. Non-State Agency, upon execution of this ATO, certifies that Non-State Agency understands that Contractor and the State may, from time to time and without Non-State Agency's consent, amend the terms and conditions of the Contract thereby affecting the terms of service Non-State Agency receives from Contractor.
10. Non-State Agency, upon execution of this ATO, certifies that Non-State Agency has reviewed the terms and conditions, including the rates and charges, of the Contract.
11. Non-State Agency, upon execution of this ATO, certifies the Non-State Agency understands that billing invoices for Service(s) subscribed to under the Contract are subject to review and/or audit by the State pursuant to provisions of the Contract.
12. All Service(s) ordered under this ATO will be submitted using the STD. 20, signed by the Non-State Agency's authorized signatory. Any additions or deletions to Service(s) shall likewise be accomplished by submission of a STD. 20, noting changes.
13. Non-State Agency may, by placing Service orders issued by its duly authorized representative with Contractor, order any of the Service(s) listed in the Contract. Contractor shall bill Non-State Agency, and Non-State Agency shall pay Contractor according to the terms and conditions and rate tables set forth in the Contract for such Service(s).
14. If the Service(s) ordered under a STD. 20 are installed, and after the first fiscal year funds are not appropriated to enable the Non-State Agency to continue paying for services, or universal service discounts are not received, the Non-State Agency may terminate impacted Service(s) without penalty.
15. Whenever any notice or demand is to be given under this Contract to Contractor or Non-State Agency, the notice shall be in writing and addressed to the following:

Non-State Agency:

Address:

Attn:

Contractor:

Address:

Attn:

Notices delivered by overnight courier service shall be deemed delivered on the day following mailing. Notices mailed by U.S. Mail, postage prepaid, registered or certified with return receipt requested, shall be deemed delivered five (5) days after mailing. Notices delivered by any other method shall be deemed given upon receipt.

IN WITNESS WHEREOF, the parties hereto have caused this ATO to be executed on the date shown below by their respective duly authorized representatives

Contractor:

By:

Title:

Date Signed:

Non-State Agency:

By:

Title:

Date Signed:

Approved By:

Department of Technology Services,
Statewide Telecommunications and Network Division

By:

Title:

Date Signed:

Department of Technology Services (DTS) Statewide Telecommunications and Network Division (STND) P.O. Box 1810 Rancho Cordova, CA 95741-1810		Telecommunications Services STND-XXX (Future)	
DTS/STND Work Authorization			
Contractor		Agency Project Contact	
Contract Number		Title	
Agency		Phone Number	
Attach additional pages as needed			
Justification of the need for the wholly unanticipated work			
Description of the work to be accomplished by Contractor			
Job Classification or approximate skill level of personnel to be made available by Contractor			
Identification of all significant material to be developed by Contractor and delivered to the State			
Identification of all significant material to be delivered by the State to Contractor			
Estimated time schedule for the provision of this work by Contractor			
Completion criteria for the work to be performed			
Name or identification of Contractor personnel to be assigned			
Contractor's estimated work hours per person (and/or estimated subtotal of rates and charges per Deliverable(s) and/or Service(s)) required to accomplish the work			
Contractor's billing rates per work hour per person (and/or estimated rates and charges per unit for Deliverable(s) and/or Service(s)) required to accomplish the work			
Contractor's estimated total cost of this Work Authorization			\$

Approval _____
 Department of Technology Services (DTS)
 Statewide Telecommunications and Network Division (STND)

Date _____

EXHIBIT A-5**INDIVIDUAL PRICE REDUCTION NOTIFICATION**

The State of California ("State") and _____ ("Contractor, Module _____") have entered into a Contract for Service(s) dated _____ ("Contract"). All terms and conditions (including Definitions) set forth in the Contract are incorporated herein by reference.

This Individual Price Reduction Notification (IPRN) document provides notice to DTS/ONS of the Service(s), location(s) and IPR Service rate(s) offered by Contractor for the listed Agency as specified below. The IPR Service rate(s) specified below shall become effective upon approval of this IPRN by DTS/ONS, unless otherwise noted in this IPRN document, subject to the conditions provided in the Contract (see RFP Section 4.5.2 and Sections 60 and 72 of the referenced Contract) and herein below:

_____ ("Agency")
desires to purchase and the Contractor agrees to provide the following Service(s) available pursuant to Module ____ at the location(s) and reduced rate(s) set forth below:

Description of Contract Service(s):

IPR Service rate(s):

Location(s) (service address(es)) where reduced rate(s) apply:

Requested effective date of rate reduction(s):

Expiration date (Limited Duration IPR only):

Termination liability, if any (Limited Duration IPR only)

Use additional pages as necessary and attach to the IPRN document.

Set forth below are Contract provisions that apply to the IPR process:

General IPR Provisions

The following provisions apply to all IPRs:

1. Contractor may enter into price negotiations with Agencies. These price negotiations allow Contractor to reduce prices: a) on one or more Services; b) for one or more Customers at a time; and/or c) by geographic area or location(s).
2. IPRs shall be for reduced Service pricing only. All other Contract terms and conditions, including Service Level Agreements, will remain unchanged.
3. DTS/ONS has final approval or disapproval authority for all IPRs. An IPR shall not be implemented until approved in writing by DTS/ONS. An IPR becomes effective on the date that it is approved by DTS/ONS, unless otherwise noted in the IPR Notification (IPRN) document.
4. Within ten (10) business days of an Agency's concurrence to an IPR, the Contractor shall submit the IPR on an IPRN document to the DTS/ONS for written approval.
5. No additional service taxes, fees, surcharges or surcredits will be allowed except as per RFP Section 5.5.2 and Appendix B, Model Contract Language, Section 60.
6. Once an IPRN is approved by DTS/ONS, Contractor shall not cancel, or increase pricing for, any Service listed in the IPRN.
7. The Contractor shall post the IPR Service rate(s) on a DTS/ONS designated website within ten (10) business days of the IPRN's approval. DTS/ONS shall, at its sole discretion, determine and inform Contractor of the specific information to be posted.
8. All IPRs shall be subject to examination and audit pursuant to Appendix B, Model Contract Language, Section 33.
9. The IPRN and information regarding the approved IPR Service rate(s) shall be subject to the California Public Records Act.
10. Implementation of an approved IPR does not require reduction of statewide rate(s) for Service(s) subject to the IPR, pursuant to Appendix B, Model Contract Language, Section 70. However, if statewide rate(s) are reduced below the IPR rate(s) for such Service(s), the reduced statewide rate(s) shall automatically apply to the IPR.

Contract Duration IPRs

The following provisions apply to Contract Duration IPRs:

1. The Contractor shall be allowed to reduce one or more statewide Service prices for an Agency for the duration of the Contract. Refer to Appendix B, Model Contract Language, Section 72.
2. Customer may cancel any or all Services subject to the Contract Duration IPR without penalty.
3. The Contract Duration IPR Service rate(s) shall continue in effect from the date of IPRN approval by DTS/ONS through the remainder of the term of the Contract unless terminated earlier by Customer or DTS/ONS in accordance with the terms and conditions of the Contract, or if RFP Section 4.5.2.1 (10) applies.

Limited Duration IPRs

Limited Duration IPRs are only available for Module 1 and Module 2 Services. The following provisions apply to Limited Duration IPRs:

1. When a Customer or the State receives a formal written offer from an entity other than the Contractor for service(s) at rate(s) below that of CALNET II for a limited duration, the Contractor will be offered the opportunity to respond with an offer of a Limited Duration IPR with rate reduction(s) for such Service(s).
2. The term of a Limited Duration IPR shall not exceed two years, and in all cases shall not exceed the Term of the Contract.
3. If the Contractor does not provide a proposal within fifteen (15) business days or within a time period determined by DTS/ONS and the Customer, or if DTS/ONS does not approve the Contractor's proposal, an exemption from use of the Contract for the specified Service(s) may be immediately granted if a) the Customer is a non-exempt State agency, and b) the Service(s) offered by the outside vendor are determined by the State to be essentially comparable to corresponding Service(s) (considering factors such as Service Level Agreements, reliability, etc.). All State Customers (exempt and non-exempt) are required to follow State procurement processes to acquire services outside the Contract.

Additional Instruction:

Whenever any notice or demand is given or required pursuant to this IPRN to Agency, Contractor or State, the notice shall be in writing and delivered to the authorized signatories identified below. Notices delivered by overnight courier service shall be deemed delivered on the day following mailing. Notices mailed by U.S. Mail, postage prepaid, registered or certified with return receipt requested, shall be deemed delivered five (5) days after mailing. Notices delivered by any other method shall be deemed delivered upon receipt.

Signature page follows.

The undersigned Agency, upon execution of this IPRN, certifies that it has received, reviewed and concurs to the proposed rate (s) applicable to the Service(s) described herein above.

(Contractor, Module _____)

(Agency)

By: _____

By: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

☐

Approved

☐

Denied

(Check appropriate response.)

Department of Technology Services,
Office of Network Services

By: _____

Title: _____

Date Signed: _____

Approved as to form



City Attorney

ATTACHMENT 6

AUTHORIZED SUBCONTRACTORS AND BUSINESS PARTNERS, MODULE 1

Listed below are the subcontractors and business partners that are authorized to submit invoices and receive payment for services provided under the authority of the CALNET II Contract.

Business NameAddress

RESOLUTION NO. 2010-_____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE
CITY MANAGER TO EXTEND USE OF THE CALNET2
AGREEMENT FOR SELECTED TELECOMMUNICATION SERVICES
UNTIL SUCH TIME AS THE STATE CONTRACT EXPIRES

=====

WHEREAS, the City buys certain technology products, such as telephone services, at discounted rates through the State of California contract called CALNET2; and

WHEREAS, CALNET2 is a previously competitively bid contract that offers State and non-state agencies a comprehensive array of telecommunications services throughout the State of California; and

WHEREAS, CALNET2 is a five-year contract awarded on January 3, 2007, and contains an option for two one-year extensions; and

WHEREAS, the City Council authorized the City Manager to sign the CALNET2 Agreement on September 17, 2008 and gave approval for purchases to be made under the Agreement through December, 2010; and

WHEREAS, staff recommends authorizing the City Manager to extend the use of the CALNET2 contract for technology purchases through the expiration of the contract.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to extend use of the CALNET2 Agreement for selected telecommunication services until such time as the State contract expires.

Date: September 1, 2010

=====

I hereby certify that Resolution No. 2010-_____ was passed and adopted by the Lodi City Council in a regular meeting held September 1, 2010, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing Early Payoff of Loan Contract E54402 in the Amount of \$1,433,395.68 with the State Department of Water Resources and Increasing Appropriations in the Amount of \$1,205,370

MEETING DATE: September 1, 2010

PREPARED BY: Deputy City Manager

RECOMMENDED ACTION: Adopt resolution authorizing early payoff of loan contract E54402 in the amount of \$1,433,395.68 with the State Department of Water Resources and increasing appropriations in the amount of \$1,205,370.

BACKGROUND INFORMATION: In 1997, the City completed improvements to the water system that were funded by a loan from the State Department of Water Resources (DWR) in the amount of \$3,129,827.51. The terms of the loan were semi-annual payments of \$114,012.04 for 20 years at a note rate of 3.41 percent. The regularly scheduled payments for FY 2010/11 have been approved in the budget.

In anticipation of the upcoming financing for the Surface Water Treatment Plant, staff had the City's financial advisor, Lamont Financial Services, evaluate options with respect to the DWR loan. The financial advisor looked at options of paying the loan as scheduled over the remaining seven years, refinancing the loan with bond proceeds and paying off the loan with available cash balances. Lamont determined there would be a nominal economic advantage in the current rate environment to refinance the existing loan with bond proceeds. Further, Lamont and the City's rate consultant determined there would not be a negative impact to bond coverage ratios if we were to pay the loan in full prior to the next payment date of October 1, 2010.

Staff has received a pay-off statement from DWR that shows the total pay-off as \$1,433,395.68 on September 30, 2010. Interest savings from early pay-off total \$162,772.80. The Water Fund will need additional appropriation authority of \$1,205,370 to accomplish the early retirement of the loan.

Staff recommends that Council approve the early pay-off of the DWR loan and increase appropriations in the Water Fund by \$1,205,370.

FISCAL IMPACT: Early retirement of the DWR loan will save ratepayers \$162,772.80 in interest costs over the next seven years, which would be partially offset by lowered interest earnings on a lower cash balance.

FUNDING AVAILABLE: Water Utility Operating Fund (180)

F. Wally Sandelin
Public Works Director

Jordan Ayers
Deputy City Manager

APPROVED: _____
Konradt Bartlam, Interim City Manager

RESOLUTION NO. 2010-_____

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING EARLY PAYOFF OF LOAN CONTRACT
E54402 WITH THE STATE DEPARTMENT OF WATER
RESOURCES AND INCREASING APPROPRIATIONS

=====

WHEREAS, in 1997, the City completed improvements to the water system that were funded by a loan from the State Department of Water Resources (DWR) in the amount of \$3,129,827.51; and

WHEREAS, the terms of the loan were semi-annual payments of \$114,012.04 for 20 years at a note rate of 3.41%; and

WHEREAS, in anticipation of the upcoming financing for the Surface Water Treatment Plant, the City's financial advisor, Lamont Financial Services, evaluated options with respect to the DWR loan; and

WHEREAS, the options considered were as follows:

- 1) Paying the loan as scheduled over the remaining seven years; or
- 2) Refinancing the loan with bond proceeds; and
- 3) Paying off the loan with available cash balances.

WHEREAS, Lamont determined that there would be a nominal economic advantage in the current rate environment to refinance the existing loan with bond proceeds; and

WHEREAS, Lamont and our rate consultant determined there would not be a negative impact to bond coverage ratios if we were to pay the loan in full prior to the next payment date of October 1, 2010; and

WHEREAS, staff has received a pay-off statement from DWR that shows the total pay-off as \$1,433,395.68 on September 30, 2010, thus creating an interest savings from early pay-off totaling \$162,772.80; and

WHEREAS, the Water Fund will need additional appropriation authority of \$1,205,370 to accomplish the early retirement of the loan; and

WHEREAS, staff recommends that the City Council approve the early pay-off of the DWR loan and increase appropriations in the Water Fund by \$1,205,370.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby approves the early pay-off of the State Department of Water Resources loan E54402 and further approves an increase in appropriations in the Water Fund by \$1,205,370.

Dated: September 1, 2010

=====

I hereby certify that Resolution No. 2010-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held September 1, 2010, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Approving Impact Mitigation Fee Program Annual Report for Fiscal Year 2009/10
MEETING DATE: September 1, 2010
PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution approving the Impact Mitigation Fee Program Annual Report for Fiscal Year 2009/10.

BACKGROUND INFORMATION: The City's Development Impact Mitigation (IM) Fee program consists of eight separate fee categories/funds, plus the public art set-aside. They are Water, Wastewater, Streets, Storm, Police, Fire, Parks and Recreation and General City Facilities. The fees can only be used for new capital improvements/equipment needed to accommodate new growth. The fees were established in 1991 and updated last in 2006.

In accordance with the State's annual reporting requirements, staff has prepared the following exhibits:

Exhibit A - A summary of the current and past fees, beginning and ending balances for each fee account, total fees collected, interest earned, and total expenditures from each account for FY 2009/10.

Revenues shown include fees, totaling \$1,174,459, for Costco that were billed for in FY 2009/10 and accrued as a receivable but will not be collected until FY 2010/11.

Exhibit B - A summary by account of public improvement projects on which fees were expended during FY 2009/10.

In general, revenues for the prior fiscal year fell under budget estimates. Shortfalls generally do not affect operations as all the funds are for capital improvements and associated costs (such as engineering). An exception is the Wastewater IM Fund that is obligated to pay approximately \$1.5 million per year for White Slough Water Pollution Control Facility Improvements.

Revenue from some of the funds is being used to reimburse other funds for costs of past projects that were advanced ahead of the funds being available. These include a \$1.225 million loan from the Water IM Fund to the Fire IM Fund for construction of Fire Station No. 4. Additionally, the Parks IM Fund has a remaining loan due of \$238,385 from the Streets IM Fund that will be repaid this fiscal year, depending on revenues.

Per State law, this information needs to be available to the public at least 15 days prior to review by the City Council. This information has been posted on the City's website and media, such as the *Lodi News Sentinel* and the *Stockton Record*, have been notified of the report's availability.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

F. Wally Sandelin
Public Works Director

Prepared by Rebecca Areida-Yadav, Management Analyst
Attachments

APPROVED: _____
Konradt Bartlam, Interim City Manager

RESOLUTION NO. 2010-_____

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING THE IMPACT MITIGATION FEE PROGRAM
ANNUAL REPORT FOR FISCAL YEAR 2009-10

=====

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby approves the Impact Mitigation Fee Program Annual Report for fiscal year 2009-10, as shown on Exhibits A and B attached and made a part of this Resolution.

Dated: September, 2010

=====

I hereby certify that Resolution No. 2010-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held September 1, 2010, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2010-_____

	A	B	C	D	E	F	G	H	I	J	K
1	EXHIBIT A										
2	IMPACT MITIGATION FEE PROGRAM										
3	FY 2009/10 Annual Report										
4											
5											
6	Fee:	Wastewater	Water	Storm Drain	Streets	Regional Transp	Police	Fire	Parks & Rec	General Facilities	Art in PP
7	Fund # :	173	182	326	332	338	1215	1216	1217	1218	1214
8											
9	Fee Amount 7/1/09 - 12/31/09 (1)	5,785	5,334	19,508	15,175	3,002	2,097	2,049	29,461	8,470	2%
10	Fee Amount 1/1/10 - 6/30/10 (1)	5,785	5,390	19,713	15,335	3,002	2,119	2,070	29,770	8,558	2%
11											
12	Fund Balance - Beginning of Year	2,017,426.91	771,104.07	3,967,598.90	(42,528.32)	661,360.80	274,605.12	(1,355,552.03)	3,193,441.04	(62,626.73)	266,867.53
13											
14	Revenues:										
15	Investment Revenues	19,188.75	(3,073.38)	26,698.31	2,361.89	4,573.58	2,232.55	(124.45)	15,655.80	1,592.84	1,155.01
16	Impact Mitigation Fees	321,476.14	270,862.80	7,219.18	460,649.99	29,130.44	126,046.93	80,426.04	695.94	41,479.39	362.24
17	Other Revenue										
18											
19	Total Revenue	340,664.89	267,789.42	33,917.49	463,011.88	33,704.02	128,279.48	80,301.59	16,351.74	43,072.23	1,517.25
20											
21											
22	Expenditures:										
23	Capital Projects	(13,604.88)	(40,184.88)	(634,840.01)	(20,560.69)	(642.42)	0.00	0.00	(436,156.90)	(378,277.74)	(80,373.93)
24											
25	Total Expenditures	(13,604.88)	(40,184.88)	(634,840.01)	(20,560.69)	(642.42)	0.00	0.00	(436,156.90)	(378,277.74)	(80,373.93)
26											
27											
28	Other Sources (Uses):										
29	Operating Transfers In										
30	Operating Transfers Out	(1,555,424.73)			(4,238.41)						
31											
32	Total Other Sources (Uses)	(1,555,424.73)	0.00	0.00	(4,238.41)	0.00	0.00	0.00	0.00	0.00	0.00
33											
34											
35	Total Fund Balance - End of Year	\$789,062.19	\$ 998,708.61	\$3,366,676.38	\$395,684.46	694,422.40	\$402,884.60	(\$1,275,250.44)	\$2,773,635.88	(\$397,832.24)	\$188,010.85
36	Change in Receivables/Payables (2)	(199,963.55)	(269,193.68)	28,293.00	(457,924.83)	(711.77)	(125,634.06)	(80,350.44)	11,701.96	(40,497.75)	(10.75)
37	Interfund Loans		(1,225,172.57)	(55,000.00)	238,385.00			1,225,172.57	(238,385.00)	55,000.00	
38	Cash Balance - End of Year	\$589,098.64	\$ (495,657.64)	\$3,339,969.38	\$176,144.63	\$693,710.63	\$277,250.54	(\$130,428.31)	\$2,546,952.84	(\$383,329.99)	\$188,000.10
39											
40		(1) Fees listed are per acre for one Residential Acre Equivalent (RAE). Each land use									
41		presents a different demand for services that are reflected in RAE adjustment factors per LMC 15.64.070.									
42		RTIF fee listed is for one residential single family dwelling unit equivalent.									
43		Wastewater fees listed are per dwelling unit equivalent									
44											
45		(2) Difference between investments and accounts/retainages payable									

Cell: B30

Comment: Wastewater COP Debt Service - Future Users Portion

Cell: E30

Comment: Transfer of funds from IMF Streets fund to street fund (320) for street facilities constructed before 1991 with capacity to serve new development.

Cell: C37

Comment: Loan to Fire IMF for Fire Station #4 project.

Cell: D37

Comment: Loan to General City Facilities IMF for the IMF update

Cell: E37

Comment: Loan from Parks & Rec IMF for Lower Sacramento Rd project

Cell: H37

Comment: Loan from Water IMF for Fire Station #4 project.

Cell: I37

Comment: Loan to Regional Street IMF for Lower Sacramento Rd project.

Cell: J37

Comment: Loan from Storm IMF for the IMF update

EXHIBIT B
IMPACT MITIGATION FEE PROGRAM
SUMMARY OF PUBLIC IMPROVEMENT PROJECT EXPENDITURES
FY 2009/10

Project No.	Account No.	Description	Wastewater 173	Water 182	Storm Drain 326	Streets 332	RTIF 338	Police 1215	Fire 1216	Parks & Rec 1217	General Facilities 1218	Art in Public Pl 1214
		173010 GPS Control Grid	1,484									
		173356 MSC Fleet Services Shop	5,059									
		182005 Surface Water Design		2,934								
		182010 GPS Control Grid		1,484								
		182356 MSC Fleet Services Shop		5,059								
		182463 Well #27		21,546								
		182465 Well #28		9,163								
MWWI003												
		326010 GPS Control Grid			1,484							
		326017 G-Basin			562,963							
		326037 G-Basin Storm Pump Station			1,106							
		326040 Debenedetti Park Phase 1			76,350							
		332010 GPS Control Grid				1,484						
		332088 Kettleman Gap				2,500						
		332356 MSC-Fleet Services Shop				16,577						
		338501 Regional Transportation Fees (SJ County, SJCOG)					642					
		1214001 Art in Public Places										1,675
		1214005 Celebrate the Harvest										42,133
		1214007 Better Days										21,500
		1214008 Project Lodi Art										66
		1214009 Japan town mural										15,000
		1217004 MPR059 Century Meadows Park								91,215		
		1217005 Grape Bowl Surface								155,774		
		1217017 MPR052 G Basin								125,188		
		1217040 Debenedetti Park Phase 1								63,981		
		1218003 Library Phase I Remodel									25,919	
		1218050 General Plan									352,359	
		Total	6,542.87	40,184.88	641,902.02	20,560.69	642.42	0.00	0.00	436,156.90	378,277.74	80,373.93



TM

CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Approve Capital Improvement Plan for Fiscal Year 2010/11

MEETING DATE: September 1, 2010

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Approve Capital Improvement Plan for Fiscal Year 2010/11.

BACKGROUND INFORMATION: Following City Council adoption of the Fiscal Year 2010/11 Budget, staff has compiled a Citywide list of capital projects expected to begin in the coming budget year. The list does not include projects begun in past fiscal years, nor does it present projects expected to begin in future years. A copy of the draft Capital Improvement Program (CIP) is attached as Exhibit A.

At the July 28, 2010 Planning Commission meeting, the Commission made findings the CIP is in conformance with the Lodi General Plan (see Exhibit B). The City Council is requested to approve the CIP as presented.

FISCAL IMPACT: Not applicable.

FUNDING AVAILABLE: As presented in Exhibit A.

Jordan Ayers
Deputy City Manager/Internal Services Director

F. Wally Sandelin
Public Works Director

FWS/pmf
Attachments

APPROVED: _____
Konradt Bartlam, Interim City Manager

Project	Description	Amount	Funding	
Development Impact Fee Program Update	Develop facility master plans for water, sewer, storm drainage, electric distribution, transit, parks & recreation, police, fire and general city facilities. Prepare an impact fees based financial plan to implement the needed facilities as required to serve new development.	\$645,000	173 IMF Wastewater	\$100,000
			182 IMF Water	\$100,000
			326 IMF Storm	\$70,000
			332 IMF Streets	\$100,000
			1215 IMF Police	\$25,000
			1216 IMF Fire	\$25,000
			1217 IMF Parks	\$100,000
			1218 IMF General City Facil.	\$75,000
			Electric Utility	\$25,000
			Transit	\$25,000
Lockeford Street Rail Crossing Removal	Removal of abandoned rails, ties, and equipment at Main Street, Lockeford Street, Stockton Street, Washington Street and Cherokee Lane crossing. Areas where the crossings are removed will be repaved and ancillary sidewalk, striping, and underground piping will be installed.	\$450,000	325 Measure K	\$450,000
Municipal Service Center Paving	Repave interior vehicle staging areas and parking areas within the Municipal Service Center. The area is bounded by the covered bays, retired shop, and MSC offices comprising approximately 41,000 square feet.	\$200,000	171 Wastewater Capital	\$75,000
			181 Water Capital	\$75,000
			325 Streets Measure K	\$50,000
White Slough Water Quality Control Facility Solids Dewatering Facility	Construct bio-solids storage and dewatering facilities for the removal of 500 to 1,000 tons annually that will be hauled to a regional landfill.	\$5,100,000	171 Wastewater Capital (Bond Funded)	\$5,100,000
Harney Lane Widening	This is a joint construction project between the City of Lodi and the Reynolds Ranch development that consists of widening Harney Lane to four lanes from 250 feet east of Reynolds Ranch Parkway to 300 feet west of Stockton Street.	\$425,000	332 IMF Streets	\$425,000
State Route99/Harney Lane Interchange Improvements	Install traffic signals at the northbound and southbound ramp intersections at Harney Lane. Construct dedicated turn lanes and add through lanes to improve operations at the interchange.	\$1,300,000	RTIF	\$650,000
			Developer Funds	\$650,000
2011 Streets Paving Program	Repave Ham Lane between Lodi Avenue and Turner Road and repave Mills Avenue between Kettleman Lane and Jamestown Drive	\$900,000	325 Proposition 1B	\$900,000
Surface Water Treatment Plant	Construct 8 million gallon per day water treatment facility including pretreatment, membrane filtration, disinfection, storage and pumping to the transmission system. Also, construct chemical and chlorine metering systems at 25 existing well sites	\$40,000,000	181 Water Capital (Bond Funded)	\$40,000,000

Water Meter Program Construction Phase 1	Construct new water meter assemblies (including water meters) or install water meters in existing meter box assemblies at approximately 4,500 locations.	\$7,500,000	181 Water Capital	\$7,500,000
Water Well No. 27 Equipping	Install pump, motor, controls and piping improvements to complete construction of the well.	\$250,000	181 Water Capital	\$250,000
Purchase Sewer Vacuum Truck	Purchase additional Sewer Vacuum Truck to replace the existing rodding truck.	\$350,000	171 Wastewater Capital	\$350,000
DeBenedetti Park Storm Drain Pump Station	Construct 30 cubic foot per second storm drain pump station at the deep basin located in DeBenedetti Park. The facilities will include automated trash removal and remote actuating capabilities from a central location.	\$1,000,000	326 IMF Storm	\$1,000,000
Transit Maintenance Shop Solar Power	Construct ancillary support structure and solar panel array to partially power the Transit Maintenance Shop	\$1,000,000	1250 American Recovery and Reinvestment Act	\$1,000,000
Lodi Station Security Facilities	Purchase and install security cameras and lighting at the Lodi Station. Construct a security wall at the Transit Maintenance Shop.	\$323,000	1250 American Recovery and Reinvestment Act	\$323,000
Purchase Two Buses	Purchase two 30-foot Transit buses to replace old equipment.	\$634,000	1250 American Recovery and Reinvestment Act	\$634,000
Electric Transformer, Cable, and Conductor Rejuvenation	Rejuvenate transformers and cable/conductors or replacement in grids 14, 19, 20, 31, 46, 47, 48, 56, and 57.	\$1,496,000	161 Electric Capital	\$1,496,000
Automated Meter Reading Fixed Network System	Install fixed network automated meter reading antennae throughout the community to collect meter reading information for the electric, water, and wastewater utilities.	\$917,000	161 Electric Capital	\$417,000
			181 Water Capital	\$500,000
SCADA and Fiber Optics Project	Install facilities to expand the coverage of the fiber optic network to the fire stations. At the same time, install upgrades to SCADA facilities and software.	\$149,000	161 Electric Capital	\$149,000
		\$62,639,000		TOTAL

RESOLUTION NO. P.C. 10-24**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LODI
DETERMINES THAT THE CAPITAL IMPROVEMENT PROGRAM PROJECTS WILL BE
IN CONFORMITY WITH THE CITY'S GENERAL PLAN**

WHEREAS, the Planning Commission of the City of Lodi has heretofore held a duly noticed public hearing, as required by law, on the requested determination, in accordance with the California Government Code Section 65402.(a); and

WHEREAS, the project proponent is the City of Lodi, P.O. BOX 3006, Lodi, CA 95241 and

WHEREAS, the projects as described in the attachment are all capital improvement projects for the City of Lodi; and

WHEREAS, the future use of the properties will be consistent with the development standards of the adopted General Plan; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred; and

Based upon the evidence in the staff report and project file, the Planning Commission of the City of Lodi makes the following findings:

1. The Capital Improvement Program projects will be consistent with all applicable goals, policies and standards of the General Plan Policy Document as adopted by the City of Lodi.

NOW, THEREFORE, BE IT DETERMINED AND RESOLVED by the Planning Commission of the City of Lodi that the possible sale of various City-owned properties has been determined to be in conformity with the City's adopted General Plan.

Dated: August 11, 2010

I hereby certify that Resolution 10-24 was passed and adopted by the Planning Commission of the City of Lodi at a regular meeting held on August 11, 2010, by the following vote:

AYES: Commissioners: Cummins, Heinitz, Kirsten, Kiser, Mattheis, and
Chair Hennecke

NOES: Commissioners: None

ABSENT: Commissioners: Olson

ATTEST:

Planning Commission Secretary

Capital Improvement Program

Project	Description	Amount	Funding	
Development Impact Fee Program Update	Develop facility master plans for water, sewer, storm drainage, electric distribution, transit, parks & recreation, police, fire and general city facilities. Prepare an impact fees based financial plan to implement the needed facilities as required to serve new development.	\$645,000	173 IMF Wastewater	\$100,000
			182 IMF Water	\$100,000
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Capital Improvement Program

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			181 Water Capital	\$500,000
SCADA and Fiber Optics Project	Install facilities to expand the coverage of the fiber optic network to the fire stations. At the same time, install upgrades to SCADA facilities and software.	\$149,000	161 Electric Capital	\$149,000
		\$62,639,000		TOTAL

**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Accept the Notice of Draft Amendments to Conflict of Interest Code for the 2010 Calendar Year per Government Code § 87306.5.

MEETING DATE: September 1, 2010

PREPARED BY: Janice D. Magdich, Deputy City Attorney

RECOMMENDATION: Accept the Notice of Draft Amendments to Conflict of Interest Code for the 2010 Calendar Year per Government Code §87306.5.

BACKGROUND: The City Council must, as the Code reviewing body under the Political Reform Act, review the City's Conflict of Interest Code biennially to determine whether or not an amendment to the Code is necessary. The attached Resolution makes draft changes to the Code based on conditions occurring since the last update in 2008. The attached resolution is in draft form and must be published by Council to begin the 45-day public comment period on the proposed changes. A final version will be brought back to the Council for approval on November 3, 2010.

The majority of the changes reflect little more than title changes of positions, addition of new positions or deletion of abolished positions in the 2010/2011 Budget. In addition, the disclosure categories have been reduced from 20 to eight without compromising the extent of the interests to be disclosed by designated employees and officials. The streamlining of the disclosure categories is encouraged by the Fair Political Practices Commission and assists Form 700 filers by reducing confusion. For Council's convenience, the changes are reflected in underline/strikeout form in the draft resolution attached to this Council Communication.

FUNDING: Not applicable

FISCAL IMPACT: Not applicable.

Janice D. Magdich
Deputy City Attorney

APPROVED: _____
Konradt Bartlam, Interim City Manager

RESOLUTION NO. 2010-_____

A RESOLUTION OF THE LODI CITY COUNCIL REPEALING
RESOLUTION NO. 2008-210 THEREBY AMENDING CITY OF LODI
CONFLICT OF INTEREST CODE

=====

The Political Reform Act of 1974 (Government Code section 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. 18730), which contains the terms of a standard conflict of interest code. After public notice and a hearing it may be amended by the Fair Political Practices Commission to conform to amendments to the Political Reform Act. Therefore, the terms of 2 California Code of Regulations 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached appendices designating officials and employees and establishing disclosure categories shall constitute the conflict of interest code of the City of Lodi.

Designated officials and employees shall file their statements with the City Clerk of the City of Lodi and such statements shall be open for public inspection and reproduction pursuant to Government Code section 81008. Statements for all designated officials and employees will be retained by the City of Lodi.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. Resolution No. 2008-210 is hereby repealed in its entirety.
2. The terms of 2 California Code of Regulations Section 18730 and any amendments duly adopted by the Fair Political Practices Commission along with the attached Appendices in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict of Interest Code of the City of Lodi.
3. Persons holding designated positions shall file statements of economic interest pursuant to the provisions of this code.
4. All designated officials and employees shall file their statements of economic interests with the City Clerk of the City of Lodi to whom the City Council hereby delegates the authority to carry out the duties of filing officer.
5. Failure to file the required statement in a timely fashion may result in the imposition of administrative, criminal, and civil sanctions as provided in Government Code sections 81000-91014.
6. The effective date of this Resolution shall be November 3, 2010.

Dated: November 3, 2010

=====

I hereby certify that Resolution No. 2010-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 3, 2010, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

Randi Johl
City Clerk

2010-_____

APPENDIX A
DESIGNATED OFFICIALS AND EMPLOYEES

The following is a listing of those persons who are required to submit Statements of Economic Interests pursuant to the Political Reform Act of 1974, as amended:

List of designated positions required to file Form 700:

<u>Department:</u>	<u>Position:</u>	<u>Disclosure Category:</u>
City Manager	City Manager Deputy City Manager/Internal Services Director Management Analyst/ <u>Communications Specialist</u> Management Analyst/ <u>Risk Manager</u>	* 1 1 <u>1</u>
City Attorney	City Attorney Deputy City Attorney	* 1
City Clerk	City Clerk Assistant City Clerk	1 1
Community Center	Community Center Director Senior Services Coordinator Arts Coordinator Youth Commission Coordinator Sr. Facil. Maint. Worker Stage Technician <u>Art & Events Manager</u> <u>Building Services/Event Coordinator</u>	1 2,3,4,10,11,16 2,3,4,10,11,16 2,3,4, 6, 7,10,11,16,17 <u>2,5</u> 2,3,4, 6, 7,10,11,16,17 2,3,4, 6, 7,10,11,16,17 <u>2,5</u> <u>2,5</u> <u>2,5</u>
Community Development	Community Development Director Planning Manager Senior Planner Junior\Assistant\Associate Planner Community Improvement Manager Building Official Building Inspector III\Senior <u>Neighborhood Services Manager</u>	1 1 4 1 4 1 2,3,4,5,6,7,8,9,10,11,15,16 <u>2,3,5,7</u> <u>1</u>
Electric Utility	Electric Utility Director Assistant Electric Utility Director Utility Operations Supervisor Senior Electric Utility Rate Analyst Manager, Customer Services & Programs Distribution Planning Supervisor Senior Power Engineer	1 1 4,6 <u>5</u> 4 1 4,6 <u>5</u> <u>2,3,4,6,7,8,9,10,15</u>

	Electric Utility Rate Analyst	<u>2,3,5</u> <u>2,3,4,6,7,8,9,10,15</u> <u>2,3,5</u>
Fire	Fire Chief Fire Division Chief \ Operations Fire Battalion Chief \ Training Fire Battalion Chiefs Fire Division Chief \ Fire Marshall Fire Inspector	1 1 <u>4,10,11,12,19</u> <u>5</u> <u>4,10,11,12,19</u> <u>5</u> 1 1
Internal Services/Human Resources	Human Resources Manager Risk Manager Management Analyst	1 <u>2,4,14,17,18</u> <u>2,4,14,17,18</u> <u>2,8</u>
Internal Services/Financial Services & Budget	Financial Services Manager Accountant III Senior <u>Supervising</u> Accountant Budget Manager Management Analyst Senior Storekeeper Buyer Purchasing Technician	<u>2,3,4,5,13,18,20</u> <u>2,3,4,8</u> <u>2,3,4,5,15</u> <u>2,3,4</u> <u>2,3,4,5,15</u> <u>2,3,4</u> <u>2,3,4,5,13,18,20</u> <u>2,3,4,8</u> <u>2,4,14,17,18</u> <u>2,3,4,8</u> <u>2,3,4,5,10,12,16</u> <u>2,3,4,5,10,12,16</u> <u>4,5,15,16</u> 4
Internal Services/Information Systems	Information Systems Manager Senior Information Systems Analyst Information Systems Coordinator Network Administrator <u>Senior Programmer/Analyst</u>	1 <u>2,3,4,5,8,10,11,15,16</u> <u>2,3,4,5,8,10,11,15,16</u> <u>2,3,4</u> <u>15,16</u> <u>5</u> <u>2,3,4</u>
Library	Library Services Director Supervising Librarian	1 <u>4,5,11,15</u> <u>5</u>
Parks and Recreation	Parks and Recreation Director Parks Superintendent <u>Parks</u> Project Coordinator <u>Recreation Superintendent</u> <u>Recreation Manager</u>	1 1 <u>2,3,4,6,7,8,10,16</u> <u>2,3,5</u> <u>2,3,5</u> <u>2,3,5</u>

[illegible]

	Committee	<u>2,3,4,6,7,8</u>
	Members of the Lodi Animal Advisory Committee	<u>2,3,4,6,7,8,9,10,16</u> <u>2,3,4,6,7,8</u>
	Members of the Lodi Senior Citizens Commission	<u>2,3,4,6,7,8,9,10,16</u> <u>2,3,4,6,7,8</u>
Consultants		1
Community Development	CDBG Program Administration(Contract Consultant – PMC)	<u>2,3,4,5,6,7,8,9,10,11,15,16</u> <u>2,3,4</u>
	Interwest Consulting Group (Contract Plan Check Services)	<u>2,3,4,5,6,7,8,9,10,11,15,16</u> <u>2,3,4</u>
	Bureau Veritas (Contract Plan Check Services)	<u>2,3,4,5,6,7,8,9,10,11,15,16</u> <u>2,3,4</u>
	NAFFA International (Contract Plan Check Services)	<u>2,3,4,5,6,7,8,9,10,11,15,16</u> <u>2,3,4</u>
	Precision Inspection Company, Inc. (Contract Plan Check Services)	<u>2,3,4,5,6,7,8,9,10,11,15,16</u> <u>2,3,4</u>
	Rad Bartlam Dyett & Bhatia	4 1
Internal Services/Human Resources	Bragg & Associates <u>York Insurance Service Group</u> DB Claims Services Group, Inc.	<u>2,4,5,11,13,14,17,18,19</u> <u>2,3,4,8</u> <u>2,4,5,10,11,13,14,16,18,18</u> <u>2,3,4,8</u>
Public Works	West Yost & Associates Treadwell & Rollo	1 1

* Exempted from Political Reform Act of 1974, but required to file a statement of economic interests pursuant to Government Code section 87200.

Designated Employees are those positions within the city who may exercise independent judgment and make or participate in the making of governmental decisions which may foreseeably have a material effect on any financial interest.

Consultant means an individual who, pursuant to a contract with a state or local governmental agency:

- A. Makes governmental decisions whether to
 1. approve a rate, rule or regulation;
 2. adopt or enforce a law;
 3. issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order or similar authorization or entitlement;
 4. authorize the agency to enter into, modify, or renew a contract provided it is the type of contract which requires agency approval;
 5. grant agency approval to a contract which requires agency approval and in which the agency is a party or to the specifications for such a contract;
 6. grant agency approval to a plan, design, report, study or similar item;

7. adopt, or grant agency approval of policies, standards, or guidelines for the agency, or for any subdivision thereof; or
- B. Serves in a staff capacity with the agency and in that capacity performs the same or substantially the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agencies Conflict of Interest Code.

The City Manager or his designee may determine in writing that a particular consultant, although a "designated position" is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based upon the description, a statement of the extent of the disclosure requirements. The City Manager or his designee's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

Public Officials ~~Specified in~~ Who Manage Public Investments (~~Specified in~~ Government Code Section 87200):

The positions listed below manage public investments and shall file a statement of economic interests pursuant to Government Code Section 87200. These positions are listed for informational purposes only.

1. Members of the Lodi City Council
2. City Manager
3. City Attorney
4. Finance Director
5. Members of the Lodi Planning Commission

An individual holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by Government Code section 87200.

APPENDIX B

~~APPENDIX OF~~ DISCLOSURE CATEGORIES

Individuals holding designated positions must report their interests according to their assigned disclosure category(ies).

DEFINITION

~~'Unit' as used in this text means the particular department, board, commission, office or other entity using the disclosure category.~~

DISCLOSURE CATEGORIES

1. All investments and business positions in business entities, sources of income, including loans, gifts, and travel payments, from all sources wherever located; and interests in real property located within the jurisdiction of the City of Lodi or within two (2) miles of the boundaries of the City of Lodi or within two (2) miles of any land owned or used by the City of Lodi.
2. Investments and business positions in business entities, and all sources of income, including loans, gifts, and travel payments, from all sources.
3. Interests in real property located within the jurisdiction of the City of Lodi or within two (2) miles of the boundaries of the City of Lodi or within two (2) miles of any land owned or used by the City of Lodi.
4. Investments and business positions in business entities, and ~~sources of~~ income from entities, including loans, gifts, and travel payments, from sources providing supplies, services, materials, equipment or machinery of the type used by the ~~designated employee's unit~~ City of Lodi.
5. Investments and business positions in business entities, and ~~sources of~~ income ~~from~~ entities, including loans, gifts, and travel payments, from sources providing supplies, services, materials, equipment or machinery of the type used by the designated position's division or department.
~~Investments and business positions in and income from entities which are book outlets, vendors or providers of business services.~~
6. Investments and business positions in business entities, and income, including loans, gifts, and travel payments, from sources, that filed a claim against the City of Lodi during the previous two (2) years, or have a claim pending with the City of Lodi.
~~Investments and business positions in business entities and income from sources engaged in construction, building, or material supply.~~
7. Investments and business positions in business entities, and income, including loans, gifts, and travel payments, from sources of the type to request an entitlement to use agency property or facilities, including, but not limited to: licenses, utility permits, and vendor permits.
~~Investment and business positions in and income from sources engaged in construction or development.~~

- ~~8. Investment and business positions in and income from sources engaged in the construction of public works projects.~~
- ~~9. Investment and business positions in and income from construction firms involved in construction projects subject to acceptance by the City Council.~~
- ~~10. Investment and business positions in and income from business entities of the type to provide bids, supplies, vehicles and equipment.~~
- ~~11. Investment and business positions in and income from entities which provide training, services or facilities of the type utilized by the city.~~
- ~~12. Investments and business positions in business entities and sources of income which provide services and supplies of the type used in emergency services coordination and training activities.~~
13. 8. Investments and business positions in and income from Union Pension funds that may be affected by the outcome of negotiations involving monetary settlements of employer-employee memorandums involving the City of Lodi.
- ~~14. Investments and business positions in business entities and sources of income which provide medical services or facilities of the type used by the city.~~
- ~~15. Investments and business positions in and income from business entities supplying or manufacturing electronic equipment, supplies or services of the type utilized by the employee's unit.~~
- ~~16. Investments and business positions in and income from business entities providing supplies, services, equipment or machinery of the type used by the city.~~
- ~~17. Investments and business positions in and income from employment agencies or entities which provide employment or pre-employment services. Services include, but are not limited to, testing, training, consulting, recruiting, job classification studies and salary surveys.~~
- ~~18. Investments and business positions in and income from business entities which are of the type to provide any of the various types of employee insurance coverage and/or actuarial services.~~
- ~~19. Investments and business positions in business entities and income from sources which supply or manufacture firefighting or medical equipment or supplies.~~
- ~~20. All investments and business positions in business entities, sources of income, and interests in real property of the type which municipalities are permitted to invest under the California Government Code.~~



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Set a Public Hearing for September 21, 2010, to consider and approve the 2009/10 Community Development Block Grant Consolidated Annual Performance and Evaluation Report; and an amendment of the 2010/11 Action Plan to accommodate the reallocation of unused Community Development Block Grant funds from the 2009/10 Program Year.

MEETING DATE: September 1, 2010

PREPARED BY: Community Development Department

RECOMMENDED ACTION: Set a public hearing for September 21, 2010, to consider and approve the 2009/10 Community Development Block Grant (CDBG) Consolidated Annual Performance and Evaluation Report (CAPER); and the amendment of the 2010/11 Action Plan to accommodate the reallocation of unused CDBG funds from the 2009/10 Program Year.

BACKGROUND INFORMATION: A public hearing is required as part of the federal requirements of the Community Development Block Grant (CDBG) program.

The 2009/10 CAPER describes the programs and activities accomplished during that program year, in which the City received \$751,211 in federal CDBG funds. The public review and comment period for the CAPER document begins September 1, 2010 and will end September 21, 2010.

At the completion of the 2009/10 Program Year, there were unused CDBG funds from two Public Services and one City project that will need reallocating to existing 2010/11 projects, which will require the amendment of the 2010/11 Action Plan. The public review and comment period for this Action Plan amendment begins August 20, 2010 and will end September 21, 2010.

The City Council will consider approval and adoption of both the 2009/10 CAPER and the 2010/11 Action Plan amendment and provide an opportunity for public comment for both at the September 21, 2010 meeting.

FISCAL IMPACT: The CAPER document is being completed as an administrative activity that is funded through the City's CDBG administrative allocation from HUD.

FUNDING AVAILABLE: Not Applicable

Konradt Bartlam
Community Development Director

KB/jw

APPROVED: _____
Konradt Bartlam, Interim City Manager

Comments by the public on non-agenda items

THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES.

The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted.

Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

Comments by the City Council Members on non-agenda items



CITY OF LODI COUNCIL COMMUNICATION

AGENDA ITEM_I-01

AGENDA TITLE: Appointment to the Lodi Improvement Committee

MEETING DATE: September 1, 2010

PREPARED BY: City Clerk

RECOMMENDED ACTION: Concur with the Mayor's recommended appointment to the Lodi Improvement Committee.

BACKGROUND INFORMATION: On July 7, 2010, the City Council directed the City Clerk to post for one vacancy on the Lodi Improvement Committee. The Mayor reviewed the applications and recommends that the City Council concur with the following appointment.

Lodi Improvement Committee

Timothy Litton Term to expire March 1, 2011

NOTE: Three applicants (two new applications and one on file); posting 7/7/10; application deadline 8/9/10

Government Code Section 54970 et seq. requires that the City Clerk post for vacancies to allow citizens interested in serving to submit an application.

FISCAL IMPACT: None.

FUNDING AVAILABLE: Not applicable.

Randi Johl
City Clerk

RJ/JMR

APPROVED: _____
Konradt Bartlam, Interim City Manager



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Accepting a Proposal from the Art Advisory Board for a Seward Johnson Sculpture Exhibit in Downtown Lodi for Display from April 2011 through Mid-July 2011 and Appropriating Funds (\$30,000)(CC)

MEETING DATE: September 1, 2010

PREPARED BY: Community Center Director

RECOMMENDED ACTION: Adopt resolution accepting a proposal from the Art Advisory Board for a Seward Johnson sculpture exhibit in Downtown Lodi for display from April 2011 through Mid-July 2011 and appropriating funds in the amount of \$30,000.

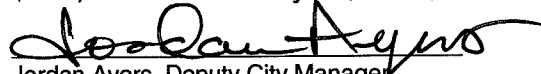
BACKGROUND INFORMATION: On May 26, 2010, the Art in Public Places Committee/Art Advisory Board created an ad-hoc committee that seeks City Council approval for a Seward Johnson Interactive Sculpture Exhibit to Lodi. The exhibit was most recently displayed from April through June in Pleasanton and Johnson's sculptures have been displayed in major cities throughout the world.

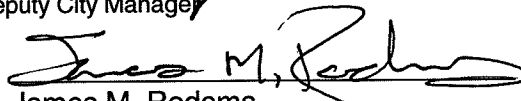
Ten sculptures of various characters posed in everyday situations would be located at public locations throughout downtown Lodi. There are plans for community activities, such as walking tour maps of the sculptures along with the Walldog murals and numerous art events. The unveiling of the sculpture exhibit will coincide with the Spring Wine Stroll on April 16, 2011, and continue through the first six weeks of the Downtown Farmer's Market. The AiPP Art Advisory Board will be selecting the 10 sculptures in the near future based on sculpture location and availability. This exhibit will offer opportunities for press in local and outlying areas, resulting in additional visitors to Lodi.

The AiPP Committee seeks an appropriation of Art in Public Places funds before taking the steps needed to bring an exhibit to Lodi. Upon selection of the pieces to be displayed the Art in Public Places Committee will bring this item and the contractual agreement, setting forth the terms of possession, back to Council for approval.

FISCAL IMPACT: The cost of the program is \$30,000 including installation. This amount will be allocated from the Art in Public Places account.

FUNDING AVAILABLE: \$187,971.00 as of May 31, 2010, Acct. No 01214 Art in Public Places


Jordan Ayers, Deputy City Manager


James M. Rodems
Community Center Director

JR/dkb
Attachments

APPROVED:


Konradt Bartlam, Interim City Manager

**Art in Public Places (AiPP) Committee / Art Advisory Board
Meeting Minutes
May 26, 2010**

**Hutchins Street Square
Meeting room: Green Room
Time: 1:00 p.m.**

A. Call to Order / Roll Call: The AiPP meeting was started at 1:06 p.m.

B. Introductions: Art in Public Places Advisory Board Members Present:
Ben Burgess, Chair (LAC); Cathy Metcalf (LAC);
Roger Stafford (SPARC); Dave Kirsten (City Planning)

Absent: Baubie Fox (Parks and Recreation)

Staff: Jim Rodems, HSS Dir.; Deanie Bridewell, HSS Events Coordinator

Community: (none)

C. Approval / Corrections of April 28, 2010 Minutes: Roger asked to delete all the paragraphs after the first paragraph in F. 1., which could stay. The first paragraph is concerning the City Council's April 21st declining the acquisition of the metal crane statue newly renamed 'Crane Dance' by Scott Wampler. *The original proposal name was 'The Rite of Spring'.*
Roger asked that with this deletion correction in F. 1. he would move that the minutes be accepted and seconded by Dave K. and the board vote carried to accept the minutes.

D. Comments by the public on non-agenda items: (None)

E. New Business:

- 1. Brochure Bids:** A motion from the last meeting approved on April 28th.
Deanie looked into the cost of producing a printed brochure of the Art in Public Places Portfolio. According to Jim Rodems this printing could be considered a action item to be used through the HSS purchasing budget for this year. There were several job pricing quotes for hundreds of copies printed in color by Duncan Press \$350, and Bonnie Ruth \$300. These brochures would aid in city tours and school field trips as a reference of Lodi's Art in Public Places Portfolio of art.

2. Art in Public Places, Art Inventory:

- a. Deanie** looked into the records of our inventory of art and it looks like a dollar value needs to be determined for the City's portfolio as pertaining to the amount of insurance coverage needed in its overall actuarial worth.

(Continued)

Art in Public Places (AiPP) Committee / Art Advisory Board
Meeting Minutes – page 2 continued
May 26, 2010

b. The Mosaic Art: Jim Rodems looked into insurance coverage of the mosaic panels of the art recently created and the liability imposed to the city. He has been in contact with Janice Hamilton, City Risk Mgr., suggested a self insured structured insurance coverage for the mosaic art panels value of assessment. Jim is following up on this insurance coverage and will advise AiPP in an upcoming meeting.

3. Japantown Mural Dedication: June 12th at 11 am

Tony Segale completed the exquisite mural art work for the Lodi Buddhist Church Annex Building on Elm Street. This work honors the history of Japanese settlers to Lodi in the area downtown known as the 'Japanese Quarter'. All are welcome to this City protocol dedication ceremony and a performance by the Purple Moon Dance troupe.

4. Interactive Art Display: *Proposal for a 3 month, 10 piece sculpture exhibition*

Roger Stafford proposed to the committee the idea of what he has seen in other communities about the idea to rent interactive art pieces for Art in Public Places.

Example idea: There would be 10 sculptures of various characters frozen in posed every day situations located at public locations through out Lodi. The idea is to spark the public's imagination with the art spread all around the four corners of the city.

There would be a time line with activities planned with other events during the 3 month exhibition to be planned for next year.

Motion: Cathy proposed a motion to the AiPP Committee to create a new Ad Hoc Committee for Interactive Art. This motion was seconded by Roger.
A vote by the AiPP board was in favor to accept and create this new Ad Hoc Committee with Roger chairing this position.

Roger accepted the Chairing position and will put together more information on this idea of renting for a limited time interactive art through out the city for a set fee. September will be the first Interactive Art Ad Hoc Committee's meeting. This art exhibition would be planned for next year 2011 and will be orchestrated with activities to enhance the exhibition experience. *(see hand out sheet of activities)*

Deanie has researched into this idea of renting a art exhibition through for example J. Seward Johnson. The total cost for a 3 month rental of 10 pieces of interactive art would be \$22,500.

Cost breakdown example:

Transportation round trip to and from Lodi	\$13,500
Conservation to restore works following exhibit	\$ 7,000
Insurance in transit and on site	<u>\$ 2,000</u>
Total fee cost	\$22,500

The payment would be made in two increments: the first upon the contract signing and the second upon notification of delivery of the works at the exhibition site.

(continued)

**Art in Public Places (AiPP) Committee / Art Advisory Board
Meeting Minutes – page 3 continued
May 26, 2010**

5. Plaques and lighting for Public Art: Jim Rodems

- a. **'Celebration of the Harvest'** duo statue at the corner of Oak Street and School Street is in need of lighting. Jim Rodems is in contact with Wally Sandelin of City Planning Dept. to consider the idea of oblique lighting this statue up for night time. Jim will advise the AiPP Committee about this needed upgrade that could be funded by AiPP.

b. Artists Plaques: Jim Rodems

The plaques for the artist's recognition through out town have not been made yet. Some ideas for these plaque's creation were proposed by Tony Segale and Rowland Cheney as examples circulated. Jim is gathering information to get these bronze artist title and credit plates created for a still to come price to be covered by the AiPP fund.

F. Other Business:

1. **AiPP Policy Discussion:** Jim Rodems indicated that he has been working with Janise Hamilton, City Lawyer, the Re-development agency. This is a Component of the RDA City Council staff to provide the AiPP Policy with a template to put in the overall outlined changes in the wording of the policy. At a future date the advised AiPP will be presented with the new template. Jim Rodems will let us know when this will be on the agenda. Overall the policy defines what art means to the community.

G. Staff and Commission Reports: (none)

H. Comments by the staff on non-agenda items:

1. Dave Kirsten announced that he will be possibly running for City of Lodi, City Council in an upcoming election.
He mentioned that the metal crane statue may come to light again and there may be some other developments concerning this art piece and Dave will let us know.

- I. **Adjournment:** A motion was made by Roger and seconded by Cathy to close the meeting at **2:20 pm. The next meeting June 23rd, 2010 at 1pm.**

Respectfully submitted;

**Ben Burgess
Art Advisory Board, Chairman / Art in Public Places Committee**

Cathy Metcalf, Art Advisory Board, AiPP

01214 Arts in Public Places

Description	Budget	Actual	Encumb.	Difference	Percent
Revenues					
Tax Revenues					.00 %
Licenses and Permits					.00 %
Fines and Forfeitures					.00 %
Investment/Property Revenues		1,136		-1,136	.00 %
Revenue from Others					.00 %
Services Charges	19,216	341		18,875	1.77 %
Other Revenue					.00 %
Total Revenues	19,216	1,477		17,739	7.69 %
Expenditures					
Operating Programs					
Public Safety					0 %
Public Utilities					0 %
Transportation					0 %
Leisure, Cultural & Social Services					0 %
Community & Economic Development					0 %
General Government					0 %
Total Operating Programs					0 %
Bulk Power Purchase					0 %
Capital Projects	88,930	80,374		8,556	90 %
Debt Service					0 %
Total Expenditures	88,930	80,374		8,556	90 %
Revenue/Expenditures (Over/Under)	-69,714	-78,897		9,183	113 %
Other Sources (Uses)					
Operating Transfers In					0 %
Operating Transfers Out					0 %
Proceeds from Debt Financing					0 %
Other Sources (Uses)					0 %
Total Other Sources (Uses)					0 %
Fund Balance, Beg of Year	266,868	266,868			100 %
Fund Balance, End of Year					
Reserved for Debt Service					
Designated Reserve					
Unreserved					
Total Fund Balance	197,154	187,971		9,183	95 %

INTERACTIVE LIFE SIZE BRONZE SCULPTURE COMES TO LODI....



Presented by the City of Lodi Art in Public Places Advisory Board

INTERACTIVE SCULPTURE



J. Seward Johnson

More than 200 life size bronze sculptures by J. Seward Johnson are part of private collections around the world.

His sculptures are found in Rockefeller Center, NYC, Pacific Place, Hong Kong, Les Halles, Paris and on the Via Condotti in Rome.

J. Seward Johnson has permanent sculpture installations in New York City, Queen Elizabeth Park, Vancouver Canada, Washington DC, to name a few.

INTERACTIVE SCULPTURE

- J. Seward Johnson's sculptures are so popular with the public because they depict people like ourselves in everyday actions, examples include:

- ▣ Painting
- ▣ Relaxing
- ▣ Shopping
- ▣ Petting a Dog
- ▣ Sports
- ▣ Gardening



INTERACTIVE SCULPTURE



Many cities have presented the Interactive Sculpture Exhibit with Great Success

- ★ Reno, NV
- ★ Santa Fe, NM
- ★ Chicago, IL
- ★ Stamford, CT
- ★ Pleasanton, CA
- ★ Atlanta, GA
- ★ Citicorp Plaza, NYC
- ★ Tulsa, OK
- ★ Dallas, TX

INTERACTIVE SCULPTURE



- ✦ Increased foot traffic where sculptures are placed
- ✦ Visitors from out of the area come to view the exhibit
- ✦ Appeals to a broad cross section of the community
- ✦ Creates a buzz, word of mouth
- ✦ Encourages Civic Pride
- ✦ Promotes Downtown Lodi
- ✦ Encourages community interaction with sculptures and each other....

INTERACTIVE SCULPTURE



- ★ Cutting Edge of Art in Public Places
- ★ Cost Effective Avenue to Provide Popular Public Art
- ★ Public Art Does Not Have To Be Permanent to Instill Lasting Memories in the Hearts and Minds of Lodi Residents

INTERACTIVE ART

Easy to Install

No anchoring

Sculptures come
on a stand

Sculptures are
too heavy to
topple



Transportation is
Included in the
fee

Insurance is
Included in the
fee

Installation Will
Be at Night to
Minimize
Inconvenience
to businesses

INTERACTIVE ART



Economic Impact

Fork Lift or Crane Required
to off load and place

Areas where Sculpture is
placed during installation will
need to be cordoned off

Fork Lift or Crane needed
again when sculptures are
loaded up to leave

INTERACTIVE ART



Known as Americana
Norman Rockwell
Genre of Art
J. Seward Johnson's
Sculptures Capture
the Imagination of the
Community....

INTERACTIVE ART



- 10 SCULPTURES
- 3 MONTHS
- DELIVERY & PICK UP
- INSURANCE
- EASY INSTALL
- TALKED ABOUT
FOREVER \$25,000

INTERACTIVE ART



Unveiling in Conjunction
with Spring Wine Stroll –
April 16th

Exhibit in Place for
Beginning Weeks of
Farmer's Market

Community Promotional Partners Include The Lodi Chamber of
Commerce and the Downtown Lodi Business Partnership

INTERACTIVE ART

LET'S BRING INTERACTIVE ART



TO LODI ~ SPRING 2011

RESOLUTION NO. 2010-_____

A RESOLUTION OF THE LODI CITY COUNCIL
ACCEPTING A PROPOSAL FROM THE ART ADVISORY
BOARD FOR A SEWARD JOHNSON SCULPTURE
EXHIBIT IN DOWNTOWN LODI

=====

WHEREAS, on May 26, 2010, the Art Advisory Board voted to create an ad hoc committee to research the Seward Johnson Interactive Sculpture Exhibit which includes ten sculptures of various characters posed in everyday situations; and

WHEREAS, the Art Advisory Board recommends that the City Council accept the proposal to place the Exhibit in Downtown Lodi during the period April 2011 through mid-July 2011.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby accept the proposal from the Art Advisory Board for a "Seward Johnson Sculpture Exhibit" in Downtown Lodi for display for the period April 2011 through mid-July 2011; and

BE IT FURTHER RESOLVED, that funds in the amount of \$30,000 be appropriated from Account No. 01214 - Art in Public Places for this exhibit.

Dated: September 1, 2010

=====

I hereby certify that Resolution No. 2010-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held September 1, 2010, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2010-_____



CITY OF LODI COUNCIL COMMUNICATION

AGENDA ITEM_J-02

AGENDA TITLE: Approve Downtown Lodi Business Partnership 2010-2011 Annual Report, Adopt Resolution of Intention to Levy Annual Assessment, and Set a Public Hearing for October 6, 2010 to Consider the Proposed Assessment

MEETING DATE: September 1, 2010

PREPARED BY: Interim City Manager

RECOMMENDED ACTION: Approve the Downtown Lodi Business Partnership (DLBP) 2010-11 Annual Report, adopt a Resolution of Intention to levy the annual assessment, and set a public hearing for October 6, 2010 to consider the proposed assessment.

BACKGROUND INFORMATION: Pursuant to Lodi Municipal Code Chapter 12.06 and Streets and Highways Code Section 36500 et seq., the DLBP membership board is required to present an annual report for City Council review and approval prior to September 1. This must be done prior to the public hearing and adoption of a resolution confirming the 2010-11 Annual Report and levy of assessment. On August 16, 2010, DLBP provided the City with the attached 2010 Annual Report for Council consideration.

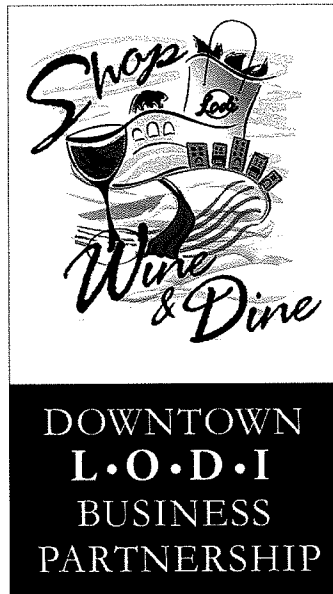
Streets and Highways Code Section 36533 provides that a Business Improvement District (BID) must file an annual report which shall include proposed assessments, budget, general descriptions of the proposed improvements and activities, description of the area served, and any declaration of intent to change boundaries of the parking and business improvement area or in any benefit zone within the area if changes are being proposed.

FISCAL IMPACT: The City does not charge the DLBP a fee to collect and distribute the assessment. On the other hand, the Lodi Tourism Business Assessment District is charged a 5 percent collection fee.

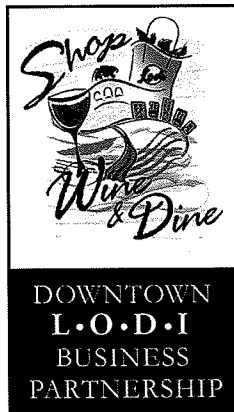
FUNDING AVAILABLE: Not applicable.

Konradt Bartlam
Interim City Manager

APPROVED: _____
Konradt Bartlam, Interim City Manager



DOWNTOWN LODI BUSINESS PARTNERSHIP 2010 ANNUAL REPORT



DOWNTOWN LODI BUSINESS PARTNERSHIP **2010 ANNUAL REPORT**

1. B.I.D. INFORMATION

California Streets and Highway Code Requirements
Articles of Incorporation
Benefit Fee Schedule
Map of Zoned Business Improvement District
Mission Statement

2. BUDGET & FINANCIALS

Funding & Expense Flow Chart
2010 Proposed Budget
2010 Event Budgets
2009 Balance Sheet
2009 Profit & Loss Statement

3. ESTABLISHED EVENTS

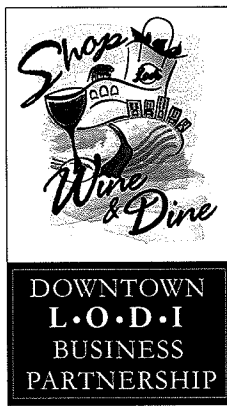
2010 & 2011 Calendar of Events
Downtown Lodi Certified Farmers Market
Parade of Lights
Other Events; *Downtown Winterfest, Downtown Trick-or-Treat & Fall Festival, "Stuck in Lodi" Car Show, etc.*

4. NEW IN 2010

Downtown Holiday Shopping Incentive Program
Shop Sunday Campaign
Passport Events; Fall Flavor Fest & Couples Passport to Lovers Lane
Post Office Plaza

5. MARKETING PLANS & GOALS

DLBP Marketing Material
2009 & 2010 Accomplishments
2011 Goals



September 1, 2010

Mr. Rad Bartlam, Interim City Manager
City of Lodi
221 W. Pine Street
Lodi, CA 95240

Re: DLBP Annual Report 2010

Dear Mr. Bartlam,

Section 11.0 of the City Ordinance Number 1654, establishing the Downtown Lodi Business Improvement Area, requires that we submit to you by September of each year our annual report and budget.

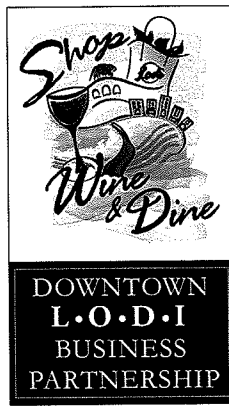
In addition, the State of California Streets and Highways code, which is the enabling legislation, also specifies that certain additional information be provided. You will find all of the required information contained in our report.

We have provided you with eight copies, five for the City Council, one for the City Clerk, one for City Attorney and one for yourself.

Thank you for your continued support.

Sincerely,

Jaime Watts, Executive Director
Downtown Lodi Business Partnership



2010 ANNUAL REPORT

Items listed below refer to Section 36533(b) of the California Streets and Highway Code:

No changes in boundaries of benefit zones within the area are proposed.

No physical improvements are planned.

Budget for the 2010 calendar year is enclosed.

The budget details all sources of income and projected expenses.

A Benefit Fee Schedule and a Map of the Business Improvement Area are enclosed.

2038309
ENDORSED
FILED

In the office of the Secretary of State
of the State of California

MAR 31 1998

Bill Jones
BILL JONES, Secretary of State

ARTICLES OF INCORPORATION OF
DOWNTOWN LODI BUSINESS PARTNERSHIP
A California Nonprofit Mutual Benefit Corporation

One: The name of the corporation is Downtown Lodi Business Partnership (A California Nonprofit Mutual Benefit Corporation).

Two: This corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under such law.

Such purposes for which this corporation is formed are to promote and improve the downtown Lodi business area, to generally improve business conditions in the downtown area, and to generally enhance the downtown area of the City of Lodi. Notwithstanding any other provision of these articles, this corporation shall not engage in any activities or exercise any powers that are not in furtherance of the purposes of this corporation.

Three: The name and address of the corporation's initial agent for service of process is Ronald M. Beckman, Esq., 111 N. Church Street, Lodi, California, 95240.

Four: The right to determine the consideration for which memberships will be issued shall be vested in the Regular Members, to be determined by a majority vote of the Regular Members in good standing.

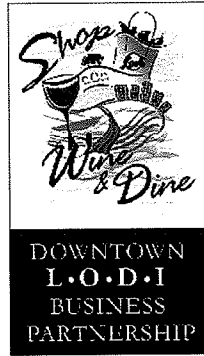
Five: No part of the net earnings of the corporation shall inure to the benefit of any member or private shareholder, as defined for purposes of Section 501 (c) (5) of the Internal Revenue Code of 1954.

Dated: March 31, 1998

Ronald M. Beckman

Ronald M. Beckman, Incorporator





DOWNTOWN LODI BUSINESS PARTNERSHIP BENEFIT FEE SCHEDULE

BUSINESS TYPE	ZONE A	ZONE B
Retailers/Restaurants*	\$240 (1-3 Employees)	\$120
	\$360 (4-6 Employees)	\$180
	\$480 (7+ Employees)	\$240
Service Businesses	\$180	\$90
Professional Businesses	\$120	\$60
Financial Institutions	\$600	\$600

**Note: Retail and restaurant businesses are assessed based on the number of employees - either full-time, or the equivalent made up of multiple employees.*

BUSINESS TYPE DEFINITIONS:

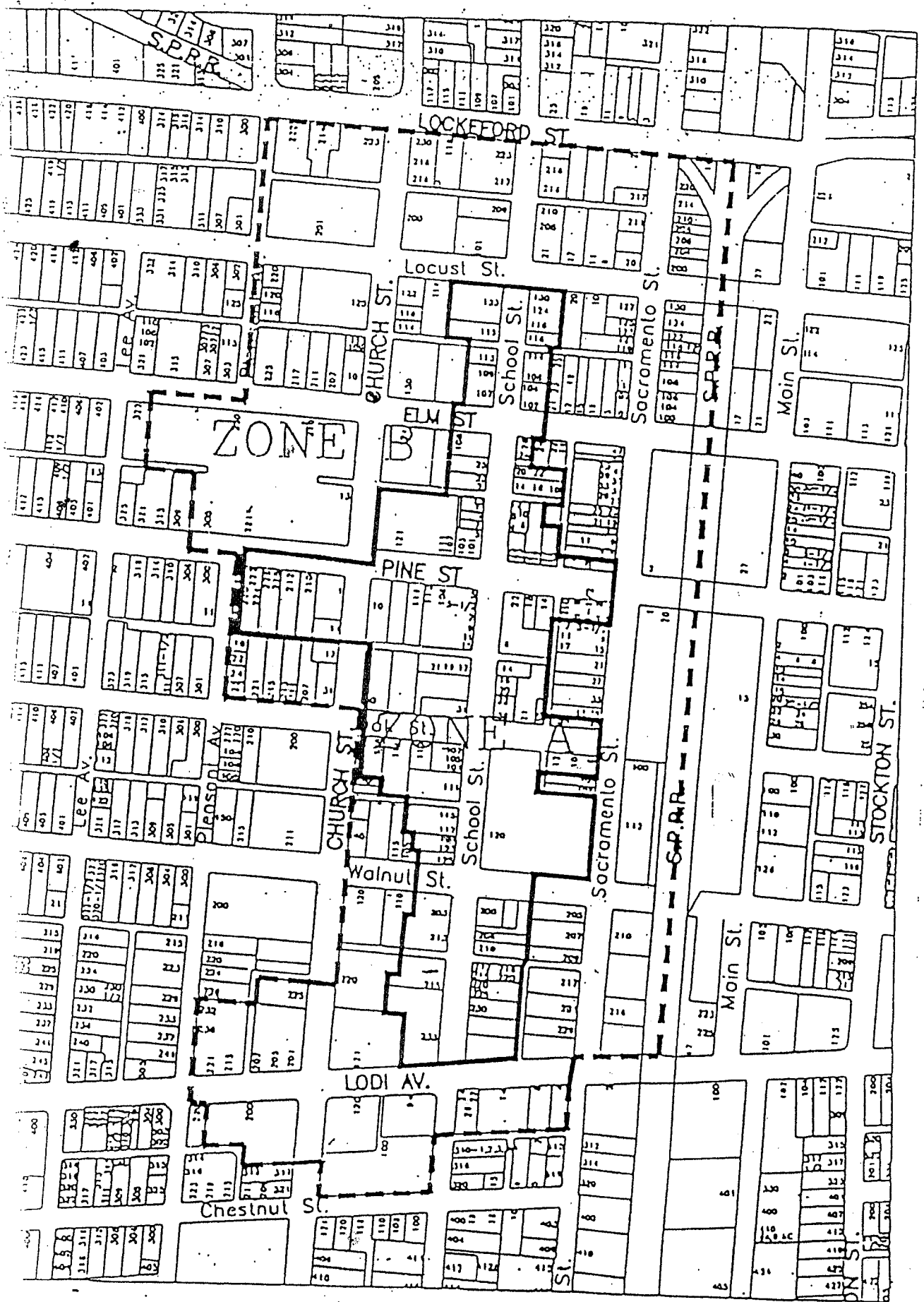
Retail and Restaurant – Businesses that buy and resell goods. Examples would be clothing stores, shoe stores, office supplies, as well as businesses that sell prepared food and drinks.

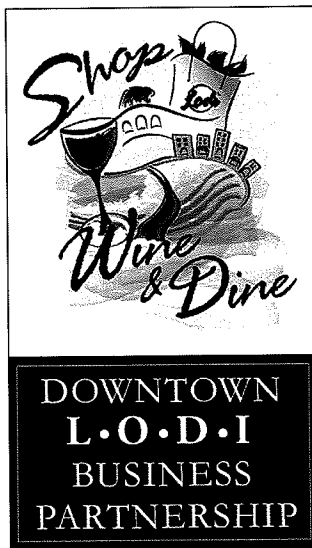
Service Businesses – Businesses that sell services. Examples are beauty and barber shops, repair shops, lodging, most automotive-oriented businesses, entertainment businesses such as theaters, etc.

Professional Businesses – Includes architects, engineers, attorneys, dentists, doctors, accountants, optometrists, realtors, insurance offices, mortgage brokers and most other businesses which require advanced or specialized licenses, and/or advanced academic degrees.

Financial Institutions – Includes banking and savings and loan institutions, as well as credit unions, etc.

Downtown Lodi Business Partnership
4 West Pine Street, Lodi, California 95240
209.369.8052 phone 209.369.8053 fax
www.downtownlodi.com





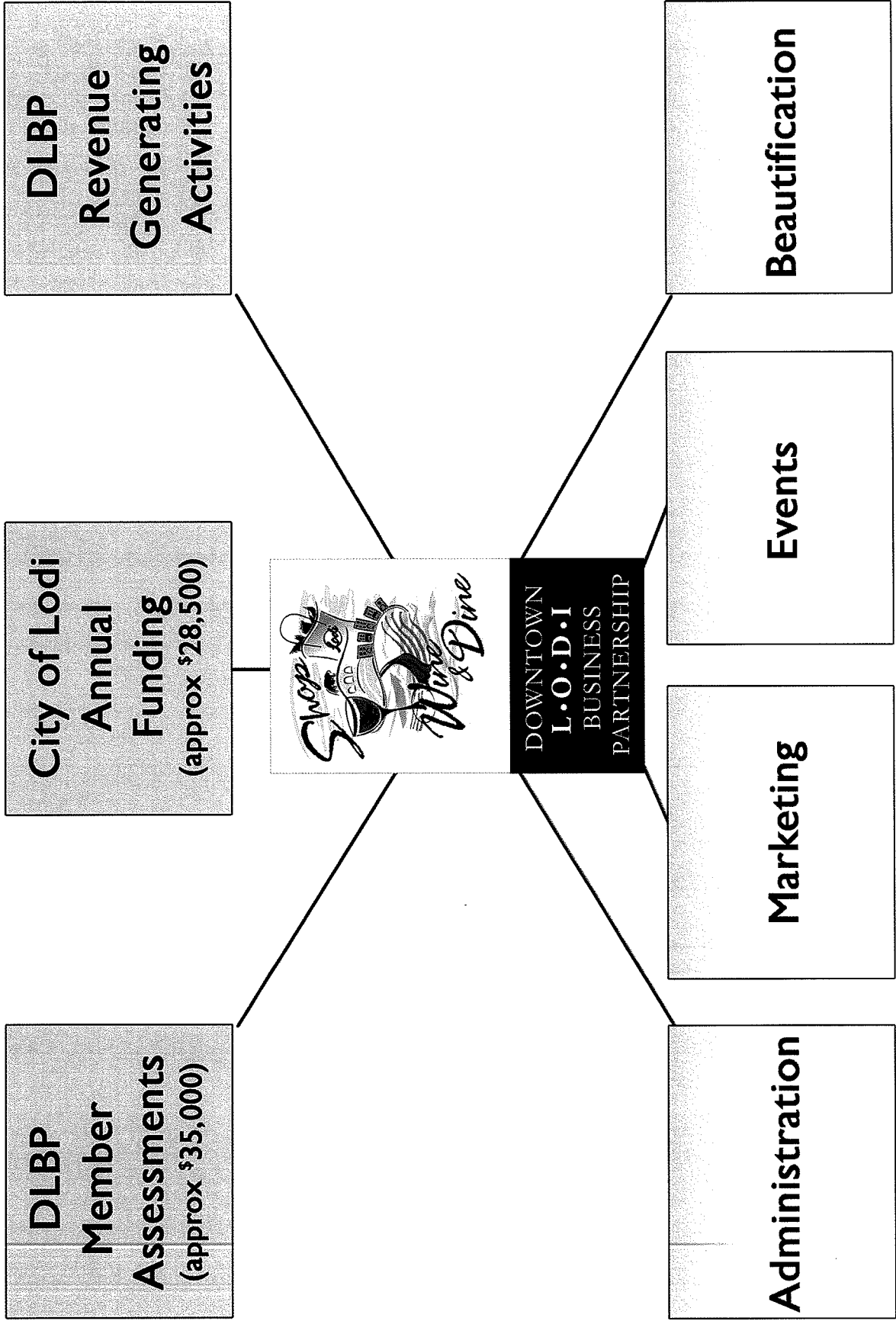
MISSION STATEMENT

The Downtown Lodi Business Partnership, comprised of business owners, professionals and merchants, is a non-profit association developed to encourage growth and prosperity in the Downtown Community of Lodi, and to maintain its economic health on an on-going basis.

This will be accomplished by:

- Encouraging development of new businesses, while retaining and revitalizing existing businesses
- Promoting retail activity by creating and maintaining a quality environment through coordinated advertising and downtown events
- Serving as an advocate for downtown businesses in dealing with local government, maintenance projects, the media and general public

4 West Pine Street, Lodi, Ca 95240
209.369.8052 phone 209.369.8053 fax
www.downtownlodi.com



Downtown Lodi Business Partnership

Proposed Budget

January 1, 2010 through December 31, 2010

Income

Assessment Fees	34900.00
City of Lodi	28500.00
Event Revenue	
Farmers Market	74000.00
Parade of Lights	14100.00
Street Banner Program	2000.00
Downtown Trick-or-Treat & Fall Festival	500.00
Winterfest	3000.00
Passport Promotions	1000.00
Miscellaneous Events & Sales	<u>5000.00</u>
Total Income	163,000.00

Expenses

Administrative	
Director's Salary	47100.00
Staff Wages	12000.00
Payroll Taxes	5200.00
Contract Labor	400.00
Insurance	11000.00
Professional Fees	3000.00
Rent	4800.00
Storage	850.00
Office Supplies	5300.00
Office Equipment	1000.00
Bank & Merchant Fees	500.00
Postage	400.00
Utilities (phone, internet, alarm, etc.)	5000.00
Marketing Expenses	
Advertising, Marketing & Promotions	2900.00
Travel	800.00
Public Relations	600.00
Seminars & Conferences	500.00
Website	2000.00
Membership Expenses	
Newsletters	300.00
Quarterly Mixers	200.00
Plaques & Trophies	200.00
Sunshine Committee	200.00

Revitalization Expenses	
Downtown Beautification & Flowers	400.00
Kiosks (maps, printing, maintenance)	1400.00
Event Expenses	
Farmers Market	47000.00
Parade of Lights	2650.00
Street Banner Program	665.00
Community Trick-or-Treat & Fall Fest	500.00
Winterfest	4635.00
Passport Promotions	500.00
Miscellaneous Events & Sales	<u>1000.00</u>
Total Expenses	163,000.00

2010 DLBP Events	Farmers Market	Downtown Winterfest	Parade of Lights	Passport Events
Income:				
Sponsorships				
Event	4000.00	3000.00	5000.00	0.00
Beer Garden	2500.00	0.00	0.00	0.00
Wine Gardent	2500.00	0.00	0.00	0.00
Beer/Wine Sales	35000.00	0.00	0.00	0.00
Entry Fees	0.00	0.00	7500.00	0.00
Passport Sales	0.00	0.00	0.00	1000.00
Vendor Fees	30000.00	0.00	1600.00	0.00
Total Income	74000.00	3000.00	14100.00	1000.00
Expenses:				
Advertising	500.00	0.00	0.00	0.00
Awards	500.00	0.00	100.00	0.00
Beer/Wine	34000.00	0.00	0.00	0.00
Carriages	0.00	1500.00	0.00	0.00
Decorations/Lights	0.00	2000.00	0.00	0.00
Entertainment	5000.00	0.00	0.00	0.00
Licenses/Permits	1500.00	35.00	150.00	0.00
Marketing/Promotion	0.00	200.00	0.00	0.00
Outside Labor	2400.00	400.00	200.00	0.00
Repairs	300.00	0.00	0.00	0.00
Sanitation	1000.00	0.00	500.00	0.00
Signage	500.00	0.00	200.00	0.00
Supplies	1000.00	0.00	500.00	500.00
Transportation	0.00	0.00	500.00	0.00
Xmas Tree	0.00	400.00	0.00	0.00
Miscellaneous	300.00	100.00	500.00	0.00
Total Expenses	47000.00	4635.00	2650.00	500.00
Net Profit/Loss	27000.00	-1635.00	11450.00	500.00

Downtown Lodi Business Partnership

Balance Sheet

As of December 31, 2009

Cash Basis

	<u>Dec 31, 09</u>
ASSETS	
Current Assets	
Checking/Savings	
Farmers & Merchants Bank	385.25
Savings Account	28.00
Petty Cash	9.13
Total Checking/Savings	<u>422.38</u>
Total Current Assets	422.38
Fixed Assets	
Office Equipment	12,491.31
Furniture & Fixtures	2,712.99
Accumulated Depreciation	-9,985.63
Total Fixed Assets	<u>5,218.67</u>
TOTAL ASSETS	<u>5,641.05</u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	
Payroll Liabilities	6,159.65
Total Other Current Liabilities	<u>6,159.65</u>
Total Current Liabilities	<u>6,159.65</u>
Total Liabilities	6,159.65
Equity	
Retained Earnings	3,079.18
Net Income	-3,597.78
Total Equity	<u>-518.60</u>
TOTAL LIABILITIES & EQUITY	<u>5,641.05</u>

Downtown Lodi Business Partnership

Profit & Loss

January through December 2009

Cash Basis

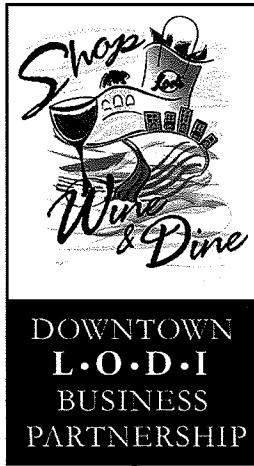
	Jan - Dec 09
Ordinary Income/Expense	
Income	
Member Assessment Fees	29,705.00
City of Lodi Funds	40,430.00
Event Revenue	
Advertising & Promotion Revenue	2,910.00
Beverage Sales	34,039.53
Parade Entry Fees	7,515.00
Sponsorship	21,760.00
Vendor Fee	29,688.00
Other Income	4,549.78
Total Event Revenue	100,462.31
Friends of Downtown	250.00
Total Income	170,847.31
Expense	
Administrative Expenses	
Bank Service Charges	919.42
Contract Labor	2,965.00
Dues and Subscriptions	193.91
Insurance-D & O and State Fund	6,589.52
Insurance - Events Liability	2,529.65
Interest	0.00
Miscellaneous	2,664.00
Office Maintenance & Repairs	1,956.58
Office Supplies	5,323.59
Payroll Expenses	
Director's Wages	47,896.93
Staff Wages	13,238.89
Payroll Taxes	5,700.92
Cell Phone	2,400.00
Total Payroll Expenses	69,236.74
Penalties	740.49
Professional Fees	
Accounting/Payroll Fees	851.25
Total Professional Fees	851.25
Rent	6,665.00
Security	315.00
Utilities	4,003.15
Administrative Expenses - Other	0.00
Total Administrative Expenses	104,953.30
Marketing Expenses	
Advertising & Promotions	
Annual Banner Program	576.08
Advertising & Promotions - Other	2,396.85
Total Advertising & Promotions	2,972.93
Mileage & Meetings	668.04
Public Realtions	1,430.00
Seminars & Marketing Campaigns	100.00
Website	795.00
Total Marketing Expenses	5,965.97
Membership	
Labor/Repairs	25.00
Newsletter	25.00
Plaques & Trophies	268.68
Postage and Delivery	712.90
Sunshine Committee	580.74
Total Membership	1,612.32
Revitalization	

**Downtown Lodi Business Partnership
Profit & Loss**

Cash Basis

January through December 2009

	Jan - Dec 09
Downtown Beautification	
Supplies	307.50
Labor/Repairs	110.00
Downtown Beautification - Other	150.00
	<hr/>
Total Downtown Beautification	567.50
Kiosk Update	130.00
	<hr/>
Total Revitalization	697.50
Event Expenses	
Advertising	1,665.61
Awards/Banners/Posters	985.81
Beverage Expense	35,215.51
Entertainment	6,999.00
Equipment Rental	382.00
Labor/Repairs	3,979.00
License/Permits/Inspection	1,724.90
Mileage & Meetings	73.39
Other Expense	224.34
Postage & Delivery	260.09
Marketing / Promotions	1,767.60
Sanitation	5,309.23
Supplies	2,629.57
	<hr/>
Total Event Expenses	61,216.05
	<hr/>
Total Expense	174,445.14
	<hr/>
Net Ordinary Income	-3,597.83
Other Income/Expense	
Other Income	
Interest Income	0.05
	<hr/>
Total Other Income	0.05
	<hr/>
Net Other Income	0.05
	<hr/>
Net Income	<u><u>-3,597.78</u></u>



2010 Calendar of Events

Valentine's Day Promotion

"Couples Passport to Downtown Lover's Lane"
Saturday, February 13th

Downtown Farmers Market

Every Thursday beginning
June 3rd through September 30th

5th Annual "Stuck in Lodi" Car Show

Saturday, July 31st

2nd Annual Fall Flavor Fest

"The Best of Downtown's Night Life"
Saturday, October 9th

Downtown Trick-or-Treat & Festival

Saturday, October 30th

15th Annual Parade of Lights

Thursday, December 2nd

Downtown Winterfest

Horse Drawn Carriage Rides & Holiday Festivities
Saturdays, November 27th, December 4th & 11th

2011 Calendar of Events

Valentine's Day Promotion

"Couples Passport to Downtown Lover's Lane"
Saturday, February 12th

Downtown Farmers Market

Every Thursday beginning
June 2nd through September 29th

6th Annual "Stuck in Lodi" Car Show

Saturday, July 30th

3rd Annual Fall Flavor Fest

"The Best of Downtown's Night Life"
Saturday, October 8th

Downtown Trick-or-Treat & Festival

Saturday, October 29th

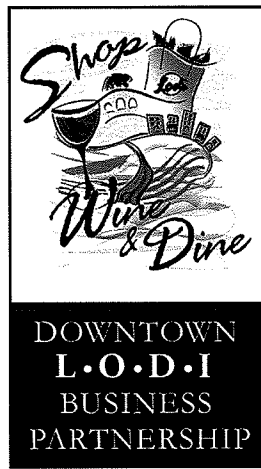
16th Annual Parade of Lights

Thursday, December 1st

Downtown Winterfest

Horse Drawn Carriage Rides & Holiday Festivities
Saturdays, November 26th, December 3rd & 10th

Visit www.downtownlodi.com
for detailed event descriptions and more information



DOWNTOWN LODI BUSINESS PARTNERSHIP EVENTS

DOWNTOWN LODI CERTIFIED FARMERS MARKET OVERVIEW

Downtown Lodi Business Partnership hosts The Downtown Certified Farmers Market. The family friendly market is held every Thursday evening beginning in June throughout the end of September.

Over 25 certified farmers offer an array of fresh produce and flowers. 50 homemade and commercial arts and craft vendors line the streets of downtown attracting over 5,000 attendees each week. An upscale beer garden which offers Lodi's local brew is located adjacent from the entertainment stage. The stage hosts live music performed by local bands, along with dance performances, comedy acts and competitions. A wine garden featuring downtown's wine tasting rooms is accompanied by music.



The entertainment also includes theme nights such as Hawaiian, Mardi Gras, Country Western and Patriotic, where there are free giveaways, contests and family fun. The Food Court accompanies the market offering a wide variety of choices including hot dogs, BBQ, salads, Philippine cuisine, snow cones, smoothies and more. A Kids Zone invites kids of all ages to jump in bouncing houses, get their face painted and interact with clowns, balloon artists and animals. The Farmers Market is Lodi's summer signature event that has something for everyone!

The DLBP has Contracted with UCP for clean-up on early Friday mornings during the Farmers Market season. The increased attendance of the market has caused a need for added clean-up. The DLBP and UCP is committed to making downtown look clean and attractive after the market and in perfect time for the weekend welcoming out-of-town visitors and our community.

The DLBP is providing a photograph and copy each week to the Lodi News Sentinel profiling a Farmers Market vendor. The editorial piece is published in every Thursday's newspaper which increases visibility of the event.

New Developments and Future Plans for Farmers Market

The 2010 Farmers Market added an additional closure on School St. between Lodi Ave. and Walnut St. This new closure includes a Wine Garden sponsored by the Dancing Fox, live entertainment, art vendors, pony rides and more. The DLBP is using all resources available to market the new closure to ensure its success.

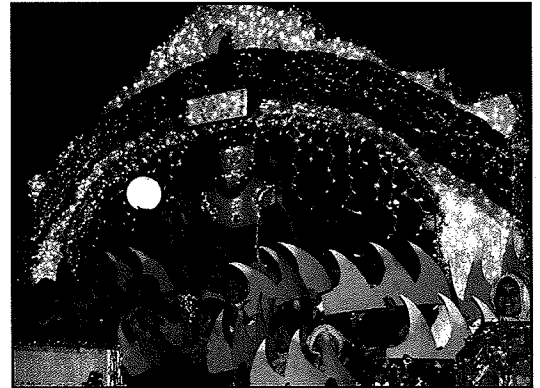
PARADE OF LIGHTS OVERVIEW

The Downtown Lodi Business Partnership presents the annual Parade of Lights – a magical holiday parade that illuminates the streets of downtown Lodi. The countless lights, floats, marching bands, dance groups and themed vehicles will entertain thousands of viewers on the first Thursday in December at 6:17 p.m. along the streets of downtown. The one mile route begins on Pine Street and continues down Church Street, Lodi Avenue, School Street and Locust.

A brilliantly lit horse-drawn carriage kicks off the festivities featuring the grand marshal. The spectacular parade concludes with holiday cheer from Santa Claus riding atop a Lodi fire truck.

Over 50,000 people of all ages line the streets of downtown. The Downtown Lodi Business Partnership invites all to be part of this signature event, Parade of Lights, which has become a cherished family tradition.

The DLBP is working on creating even more exposure of the parade and encouraging tourism to Lodi by submitting event information and photos to a variety of publications and media in the Northern California region.

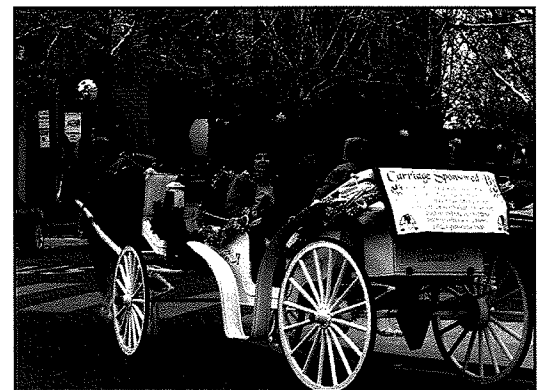


DOWNTOWN TRICK-OR-TREAT AND FALL FESTIVAL OVERVIEW

The merchants downtown invite the community to trick-or-treat at their establishments on the Saturday before Halloween between 12 noon and 4 p.m. The Fall Festival has many family activities which include; live music, a food court, pumpkin painting, petting zoo, face painting and costume contests. The festival will include farmers selling their fall harvest and arts and craft vendors

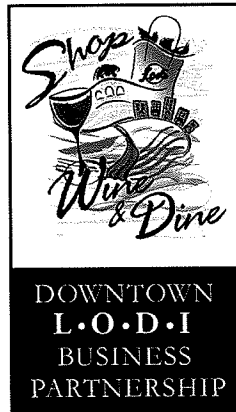
WINTERFEST OVERVIEW

Downtown Lodi celebrates the holiday season throughout the month of December and decorates the streets with lights, a 25' Christmas tree, holiday banners and fresh swags assembled by local boyscouts on the street poles. On the first two Saturdays, a horse-drawn carriage offers rides for only \$1 per person and trots along the streets of downtown. The merchants downtown display their holiday spirit and compete for the best decorated window and lighted storefront. The Holiday Shopping Incentive Program will be incorporated with Winterfest.



ANNUAL "STUCK IN LODI" CAR SHOW

The American Steel Car Club in conjunction with the DLBP hosts the annual "Stuck in Lodi" Car Show downtown in the month of August. Street rods and classic cars line the streets of downtown Lodi accompanied by a poker walk, live music, raffles, and awards.



DOWNTOWN LODI BUSINESS PARTNERSHIP **NEW IN 2010**

1. DOWNTOWN HOLIDAY SHOPPING INCENTIVE PROGRAM

The DLBP was creative in developing an incentive program to encourage the community to shop downtown during the holiday season. If \$500 was spent downtown during a specified time period and receipts were brought to the DLBP office, the shopper was able to choose a \$50 gift certificate from one of the 25 plus participating downtown businesses. The DLBP received over \$42,000 in receipts and 44 gift certificates were redeemed. The program was a success and will continue in November 2010.

2. SHOP SUNDAY CAMPAIGN

The Shop Sunday campaign was developed to promote shopping downtown on Sundays. The 22 week campaign began on Sunday, March 21st of 2010. Every Sunday between 11:30 a.m. and 4:30 p.m. in the Post Office Plaza, the DLBP had a dj playing music, a downtown booth with marketing material, banner and a raffle for a \$50 gift certificate from one of the participating businesses that are open on Sundays. An outside group was invited to set up an activity to market themselves as well as provide entertainment for the community to stimulate activity downtown on Sundays. Some examples are; Stockton Thunder Hockey, Stockton Ports Baseball, Operation Lifesaver, CHP and many more. Over 50 downtown businesses participated in the campaign, 10 of which opened on Sundays for the first time due to the efforts of the DLBP. The campaign was a success and will be considered for Spring of 2011.

The DLBP marketed the campaign by;

- Designed a Shop Sunday logo to brand the campaign that was inspired by the original DLBP logo
- Providing window decals of the logo to businesses that were open on Sundays to display in their windows
- Designed a Shop Sunday brochure listing business open on Sundays with their address and Sunday hours
- Campaign buttons with Shop Sunday logo
- Weekly write-up and photo in the Lodi News-Sentinel showcasing a business that is open on Sundays
- Activities in the Post Office Plaza every Sunday during the campaign to support the participating businesses

3. PASSPORT EVENTS

Fall Flavor Fest & Couples Passport to Lovers Lane

The passport events were developed to expose downtown businesses to a targeted audience. At no charge, the downtown businesses can list their business and a special on a passport that is themed for a special occasion. The Fall Flavor Fest highlights the best of downtown Lodi's nightlife and the Couples Passport to Lovers Lane highlights the romantic activities offered downtown. Both passport events have been added to next years calendar to become annual events.

1. POST OFFICE PLAZA PERMIT

The Downtown Lodi Business Partnership worked with the city to obtain a year-round encroachment permit and insurance for the use of the Post Office Plaza. This has allowed the DLBP to host activities, entertainment and mini-events.

The Post Office Plaza has been utilized so far for:

- Shop Sunday Activity
- Holiday Canned Food Drive
- Boy Scout Fundraiser

The DLBP is continuing to secure other activities that will add to the liveliness of downtown.

Marketing material and examples of the new developments for 2010 are attached

Downtown Holiday Shopping Incentive Program



Spend **\$500** Downtown between November 27th & December 23rd

and receive a **\$50** gift card
from one of the many participating downtown merchants

Bring all of your receipts from all of your purchases made in Downtown Lodi between Nov. 27 - Dec. 23 that total \$500 and pick out a \$50 gift certificate from:



DOWNTOWN
L.O.D.I.
BUSINESS
PARTNERSHIP

Lodi Beer Co. - City Girl - McKinley's Frame Shop - Willow Tree - Fashion Safari
Jackson Hewitt Tax Services - Pret - New & Again Consignment Furniture Gallery
PDC The Boutique - Luscious Salon - Vine & Branches Christian Bookstore - Zoop-A-Loop
Ciao Bella Spa & Boutique - Pj Polkadot - Visible Changes - House of Clocks - Danz Jewelers
John Borelli Jewelers - Burton's Shoes - The Dermal Clinic - The Dancing Fox Winery & Bakery
Lodi Feed & Fuel - Christensen's Fashions - Synowicki's Jewel Box - Shangri La
Thornton House Furniture - and more!

2 Gift Certificates from each of the above of businesses are available. First come, first serve.

Thank you for shopping Downtown Lodi

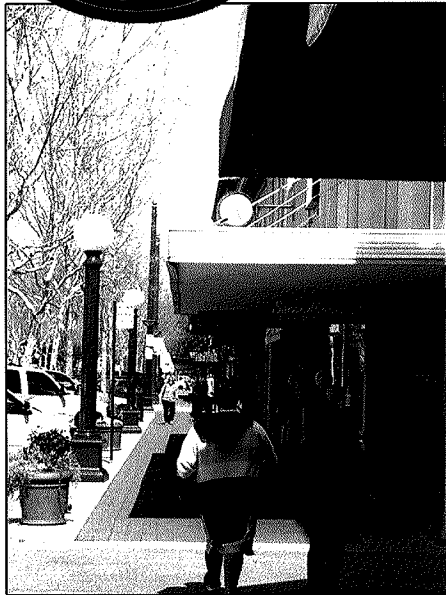
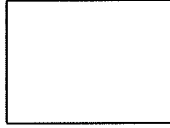
Downtown Lodi Business Partnership - 4 W. Pine St. (209) 369-8052

Visit www.downtownlodi.com for a listing of downtown businesses to shop
Retail - Restaurants - Professionals - Services - Wine Tasting Rooms - Salons & More!

Shop, Wine & Dine



in Downtown Lodi



**DOWNTOWN LODI
BUSINESS PARTNERSHIP**
P.O. Box 1565
Lodi, CA 95241



Thank you for shopping Sundays in Downtown Lodi!



**RETAIL SHOPS
RESTAURANTS
EATERIES
WINE TASTING ROOMS
ENTERTAINMENT
FREE PARKING GARAGE**



**DOWNTOWN LODI
BUSINESS PARTNERSHIP**
4 W. Pine St., Lodi, CA 95240
P.O. Box 1565, Lodi, CA 95241
Phone 209.369.8052
Fax 209.369.8053
info@downtownlodi.com
www.downtownlodi.com

**DOWNTOWN
L.O.D.I.
BUSINESS
PARTNERSHIP**

RETAIL

Antiquarium

18 W. Pine Street
11:00 a.m. to 4:00 p.m.

The Antique Group

15 W. Oak Street
11:00 a.m. to 5:00 p.m.

Burton's Shoes

226 S. School Street
12:00 p.m. to 5:00 p.m.

City Girl

14 W. Pine Street
12:00 p.m. to 4:00 p.m.

Clearwireless Internet

112 S. Church Street
10:00 a.m. to 3:00 p.m.

Comic Grapvine

9 W. Pine Street
11:30 a.m. to 4:30 p.m.

Couture Kids

Consignment Boutique

14 B S. School Street
11:00 a.m. to 3:00 p.m.

CVS Pharmacy

100 W. Lodi Avenue
8:00 a.m. to 10:00 p.m.

Fashion Safari

104 N. School Street
12:00 p.m. to 5:00 p.m.

Hummelking Antiques

15 W. Pine Street
11:00 a.m. to 5:00 p.m.

Jan's Sweet Treasures

18 W. Elm Street
12:00 p.m. to 4:00 p.m.

Joe Hassans Clothing

100 N. Sacramento Street
10:00 a.m. to 5:00 p.m.

Knowlton Gallery

115 S. School Street 14,
11:00 a.m. to 4:00 p.m.

The Launchpad

9 S. Sacramento Street
12:00 p.m. to 5:00 p.m.

Lodi Sporting Goods

220 S. Church Street, St. I
11:30 a.m. to 3:30 p.m.

The Mud Mill

115 S. School St., Ste. I
11:00 a.m. to 4:00 p.m.

New & Again

Consignment

Furniture Gallery

210 S. School Street
12:00 p.m. to 5:00 p.m.

PDC The Boutique

115 S. School Street 5
12:00 p.m. to 4:00 p.m.

Pret

15 Downtown Mall
12:00 a.m. to 4:00 p.m.

Rocky Mountain

Chocolate Factory

115 S. School Street 4,
12:00 p.m. to 4:00 p.m.

Secondhand Rose

14 N. School Street
10:00 a.m. to 4:30 p.m.

Sheri's Sonshine

Nutrition Center

6 N. School Street
12:30 p.m. to 4:30 p.m.

Stogies Cigar Lounge

230 W. Pine Street
11:00 a.m. to 5:00 p.m.

Studio 20

20 W. Elm Street
11:00 a.m. to 5:00 p.m.

Lodi Sporting Goods

220 S. Church Street, St. I
11:30 a.m. to 3:30 p.m.

Taste of Heaven

216 S. School Street
12:00 p.m. to 4:00 p.m.

Tom's Used Books

108 N. School Street
1:00 p.m. to 5:00 p.m.

Willow Tree

16 W. Pine Street
12:00 p.m. to 4:00 p.m.

Zoop-A-Loop

40 Downtown Mall
12:00 p.m. to 4:00 p.m.

RESTAURANTS

Angelo's Mexican Food

28 N. School Street
8:00 a.m. to 8:00 p.m.

Crush Kitchen & Bar

115 S. School Street,
11:30 a.m. to 9:30 p.m.

The Dancing Fox

Winery & Bakery

203 S. School Street
9:00 a.m. to 3:00 p.m.

DeVinci's

Delicatessen

220 S. Church Street, #3
11:00 a.m. to 7:00 p.m.

El Pajaro

212 S. School Street
11:00 a.m. to 9:00 p.m.

King Tsin

121 S. School Street
12:00 p.m. to 9:30 p.m.

Lodi Beer Company

105 S. School Street
11:00 a.m. to 9:00 p.m.

Lodi Feed & Fuel

27 W. Elm Street
10:00 a.m. to 10:00 p.m.

MooMoo's Burger Barn

113 N. School Street
11:00 a.m. to 8:00 p.m.

Rosewood Bar & Grill

28 S. School Street
4:00 p.m. to 8:00 p.m.

Scooter's California

Grill & Catering
121 W. Elm Street
11:00 a.m. to 8:00 p.m.

Scramblz' Kountry Kitchen

233 S. School Street
6:00 a.m. to 10:00 p.m.

Shrangri La Asian Bistro

203 S. School Street
11:00 a.m. to 9:00 p.m.

Tillie's Coffee, Tea, Etc.

21 W. Pine Street
7:30 a.m. to 3:00 p.m.

EATERIES

The Candy Box

24 N. School Street
12:00 p.m. to 5:00 p.m.

Cold Stone Creamery

115 W. Elm Street
11:00 a.m. to 9:30 p.m.

Honey Treat Yogurt

201 W. Lodi Avenue A
12:00 p.m. to 9:00 p.m.

Long John Silver's

16 W. Lodi Avenue
10:00 a.m. to 9:30 p.m.

McDonald's

200 W. Lodi Avenue
6:00 a.m. to 11:00 p.m.

Pizza Hut

21 W. Lodi Avenue
11:00 a.m. to 11:00 p.m.

WINE TASTING ROOMS

Cellardoor

21 N. School Street
12:00 p.m. to 5:00 p.m.

The Dancing Fox Winery & Bakery

203 S. School Street
9:00 a.m. to 3:00 p.m.

Grand Amis

115 N. School Street 5
1:00 p.m. to 5:00 p.m.

ENTERTAINMENT

Lodi Cinema 12 Movie Theater

109 N. School Street
11:00 a.m. to 10:30 p.m.

World of Wonders

Science Museum

2 N. Sacramento Street
10:00 a.m. to 6:00 p.m.



***Thank you for shopping
Sundays in Downtown Lodi!***



DOWNTOWN
L.O.D.I
BUSINESS
PARTNERSHIP

Couples Passport
to

Downtown

Lovers Lane

Lane

SATURDAY

FEBRUARY 13TH

5 P.M. TO 9 P.M.

DOWNTOWN LODI

\$10 COUPLES PASSPORT OFFERS

SWEET SPECIALS INCLUDING:

\$5 COUPLES PHOTOS

\$4 LONG STEM ROSES

CHAMPAGNE & DESSERT

TASTY TREATS & GIFT

\$2 HORSE-DRAWN CARRIAGE RIDES

FLORIAN
DESIGNS
115 S. School St.
Long Stem
Rose
\$4

ROCKY
MOUNTAIN
CHOCOLATE
FACTORY
115 S. School St.
\$2 off any apple

SCOOTER'S
RESTAURANT
121 W. Elm St.
Desserts On Us!
Free Dessert with
Reg. Priced Entree

GARRY'S
LOUNGE
13 S. School St.
\$5 for
(2) Well Drinks

POCTHE
BOUTIQUE
115 S. School St.
Pre de Provence
Soap
\$2.50

LAST CALL
NIGHT CLUB
114 N. Sac St.
\$4 for (2)
Champagnes,
Mimosas or
Kamikazes

LODI BEER CO.
RESTAURANT &
BREWERY
105 S. School St.
Mix & Match
(2) Beers & Cosmos
for \$5

STOGIE'S
CIGAR LOUNGE
230 W. Pine St.
\$5 for (2)
Champagne-Port
Blend Drinks

KEN SATO
STUDIO
224 S. School St.
4x6 Couples
Photo for
\$5

SHANGRI-LA
ASIAN BISTRO
203 S. School St.
Sake Sampler
(4 Varieties) &
California Roll for \$5

LODI FEED
& FUEL
27 W. Elm St.
Champagne &
Dessert for (2)
\$5

TASTE OF
HEAVEN
216 S. School St.
FREE Chocolate
Dipped Strawberries
2 per couple
Val. Day Basket Giveaway

STOOGES BAR
105 W. Pine St.
tba

VINE &
BRANCHES
110 W. Oak St.
FREE Coffee &
\$1 Raffle Tickets
for wine from
Oak Farm Vineyards

ANTIQUARIUM
18 W. Pine St.
\$5
Lead Crystal
Bud Vase

NEW & AGAIN
CONSIGNMENT
FURNITURE
210 S. School St.
Chocolate Dipped
Fortune Cookie
\$1

SCHOOL
STREET BISTR
116 N. School St.
(2) Bellagio Italian
Dipping Chicken
\$5
with Cookies
\$5

Couples
Passport
Only
\$10.00
A \$200 Value



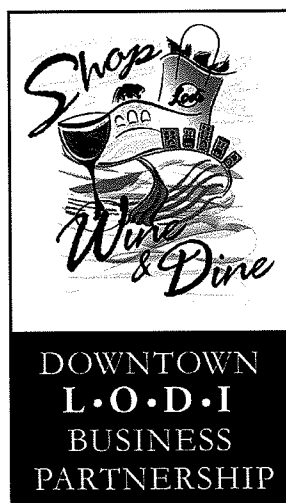
Downtown
Valentine's
Promotions
Offers:
Entertainment
Fine Food
Cocktail Lounges
Retail
Relaxing & Safe
Atmosphere

Lovers Lane

Bring your loved one along the beautiful
Downtown Lodi and enjoy sweet specials
Saturday, February 13th
5 p.m. to 9 p.m.
Establishments in Only
\$10 Couples Passport Offers

Fall In Love In Downtown Lodi!

www.downtownlodi.com



DLBP's Marketing Current Activities and Future Plans

BRAND IMAGE

- DLBP Logo

A logo has been designed and is being used in all marketing materials and signage. The logo incorporates the three things downtown is well known for - Shop, Wine & Dine. The logo has a fresh and welcoming feel and creates a positive image for downtown.

- Revamped Brochure

The downtown brochure is a visual marketing piece that is distributed throughout Lodi in various hotels, establishments, the Chamber of Commerce, Wine & Visitors Center, and is mailed to out-of-towners that enquire through phone or e-mails for downtown information. Brochures are also given to Visit Lodi to use in their market efforts outside of Lodi. It is planned to update the brochures every two to three years.

- Develop, Install and Maintain Kiosks and Maps

The maps inside the kiosks and used in the brochures have been updated and installed in the kiosks for tourists. The maps are planned to be updated and printed every two to three years depending on the turnover of businesses and budgeted costs. On a weekly basis, posters for various events submitted by the community are posted in the kiosks for public viewing.

WEBSITE

- Web Design

The DLBP website is very appealing and user-friendly. Photos and information are constantly being uploaded. The DLBP maintains and updates the website on a regular basis.

- Statistics

The DLBP website is averaging over 30,000 hits per month and is increasing every month. The partnership is driving traffic to the website by using the web address on all marketing material, linking and cross marketing with other websites.

- Website Components

The website is very user-friendly and is a huge resource for information about the downtown businesses, the organization, the events, available properties, classifieds and blog. A new component that allows views to interactively vote on future contests has been created and the organization is planning ways to utilize the new source.

DOWNTOWN BEAUTIFICATION

- Street Light Banners

DLBP designs, purchases and hangs banners from the street poles. These banners include a standard banner with DLBP logo, Farmers Market banners, Cycle Fest banners and holiday banners. The organization also has an attachment banner program to provide advertising opportunities to local businesses.

- Flower Planting of City Pots

The DLBP has created a flower potting contest among the downtown merchants and has been replacing flowers as needed to provide a beautiful backdrop of downtown for the community and tourists to enjoy. The organization plans to continue the contest and maintenance of the flower pots.

- Sidewalk Power Washing Project

The DLBP has planned to powerwash the streets and sidewalks after the Farmers Market season within the closures and outlining areas.

- Downtown Holiday Decorations

The DLBP purchases, installs and decorates a 25' Tree in Post Office Plaza, hangs Holiday Banners, and purchases fresh swags from the local Boy Scouts to place on every street corner post.

MEDIA RELATIONS

- TV Spots on Good Day Sacramento and Channel 13 News

TV stations have responded to press releases and have covered downtown events and promotions on location and in studio. The DLBP is currently working with Comcast to consider local television ads to heighten awareness of downtown and our events.

- Radio Spots on KJOY

The DLBP records 30 second radio spots in studio inviting the public (from Modesto to Sacramento) to attend the downtown Lodi events. There is no cost to the organization, but the exposure is priceless.

- News Articles in Lodi News-Sentinel, Stockton Record, San Joaquin Magazine

The DLBP has built and is continuing to build relationships with the editorial staff of many publications to receive positive press and exposure of downtown. The organization is regularly submitting press releases to over 100 media sources throughout Central California.

- Network with the Media and Public Through Interactive Web Pages; Twitter, Facebook

In addition to the DLBP website, the organization has kept up to date with the interactive web trends. DLBP has over 630 facebook "fans" and 150 Twitter "followers" that are updated on a regular basis.

COMMUNITY OUTREACH

- Represented Downtown on Committees for City-wide Activities

The DLBP was very instrumental in coordinating and promoting the Lodi Cycle Fest. DLBP also had a "downtown team" at the Relay for Life event at the Grape Festival Grounds. The organization is sponsoring the Lodi Youth Baseball Clinic in September to give back to the community.

- Participation in Various Expos promoting Downtown

The DLBP has hosted booths at the Stockton Ports games and at the Lodi Baseball Club. Marketing material was passed out, downtown magnets with web address were given to spectators and many contacts were made. The partnership plans to schedule more appearances at events and expos in the future to market downtown outside the Lodi area.

MEMBER BENEFITS

- Quarterly Mixers

The DLBP hosts mixer every quarter at a different downtown restaurant inviting the membership and their employees to visit with their fellow merchants and enjoy appetizers. A Downtown Vision Award is presented to a downtown business that has contributed to the efforts of downtown and there is a variety of material and updates available for the members.

- Bi-Monthly Newsletter

The DLBP mails out a newsletter at least every couple of months updating the membership on the happenings of downtown and to notify them of any new programs or upcoming events.

- Lodi News-Sentinel Tab Insert

Every quarter the DLBP submits articles and photographs to the Lodi News-Sentinel to publish a special section highlighting the new businesses to downtown and the upcoming activities

- Business Directory and Link on Website

Every member is listed on the DLBP website along with their address, phone and a link to their website. If a member does not have a website, the the organization has a program developed to design a page with more detailed information and photos at a minimal cost.

- Member Discounts on Marketing Programs

The DLBP has developed many marketing opportunities including; attachment banner program, web page design, internet ad and a free classified web ad at a reduced or no cost to the member.

DEVELOP RELATIONSHIPS WITH DOWNTOWN PROPERTY OWNERS

- Web Advertising

The DLBP created a new web component that allows property owners to list their available downtown properties, contact information and photos free of charge.

EXPLORE ADDITIONAL FUNDING SOURCES

- California Downtown Association (CDA)

The DLBP joined the CDA and has been utilizing their resources and knowledge to learn the latest trends in funding diversification for non-profits from Social Enterprise Initiatives to Economic Stimulus funds. In late September, the director will be attending a four day convention in Sacramento that directly addresses these options.

FUTURE GOALS....

- Downtown Property Based B.I.D.

- Downtown Directional Signage

- Shop Lodi Campaign with Chamber of Commerce

The Downtown Lodi Business Partnership is constantly exploring new ways to better promote and market downtown. We will be keeping council and staff updated on the progress and success of the organization.

RESOLUTION NO. 2010-_____

A RESOLUTION OF INTENTION TO LEVY ANNUAL ASSESSMENT FOR
DOWNTOWN LODI BUSINESS IMPROVEMENT AREA NO. 1, ESTABLISHING
PUBLIC HEARING DATE, AND APPROVING ANNUAL REPORT

WHEREAS, Downtown Lodi Business Improvement Area No. 1 was established December 17, 1997, by City Council adoption of ordinance 1654; and

WHEREAS, the annual report as required by Streets and Highways Code §536533 has been submitted to the Council by the Board of Directors of said improvement area.

NOW, THEREFORE, the City Council of the City of Lodi does hereby resolve, determine, and finds as follows:

1. Approves the Annual Report as submitted, said report being on file with the City Clerk.
2. Establishes October 6, 2010, in the City Council Chambers, Carnegie Forum, 305 West Pine Street, Lodi, California, at 7:00 p.m., or soon thereafter as possible, as the date, place, and time to hold the public hearing required by Streets and Highways Code §36534.
3. It is the intention of the City Council to levy and collect assessments within the parking and business improvement area for calendar year 2011 (the Area's fiscal year).
4. The boundaries of the entire area to be included in the Area and the boundaries of each separate benefit zone within the area set forth in a Map, Exhibit D, incorporated herein by reference. A true and correct copy of the map is on file with the City Clerk of the City of Lodi.
5. The types of improvements and activities proposed to be funded by the levy of assessments on businesses in the Area include marketing and promotional efforts; event coordination; and other activities with the goal to promote retail activities. A detailed description of activities is included in the Annual Report, Exhibit A, and incorporated by reference.
6. At the time of the public hearing, written and oral protests may be made. The form and manner of protests shall comply with Streets and Highways Code § 36524 and 36525.

Date: September 1, 2010

I hereby certify that Resolution No. 2010-_____ was passed and adopted by the Lodi City Council in a regular meeting held September 1, 2010, by the following vote:

AYES: COUNCIL MEMBERS –
NOES: COUNCIL MEMBERS –
ABSENT: COUNCIL MEMBERS –
ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

TM

AGENDA TITLE: Authorize Staff to Modify Memorandum of Understanding (MOU) According to Signed Addendum Between the City of Lodi and the Lodi City Mid-Management Association

MEETING DATE: September 1, 2010

SUBMITTED BY: Human Resources Manager

RECOMMENDED ACTION: Authorize staff to modify Memorandum of Understanding (MOU) according to signed addendum between the City of Lodi and the Lodi City Mid-Management Association.

BACKGROUND INFORMATION: The attached addendum modifies the existing Memorandum of Understanding (MOU) between the City and Lodi City Mid-Management Association. Rather than renegotiate a new MOU, the City and the Lodi Mid-Management Association have reached a tentative agreement to extend the current MOU through December 31, 2011.

FISCAL IMPACT: None.

FUNDING AVAILABLE: Not applicable.

Respectfully submitted,

Dean Gualco, Human Resources Manager

Jordan Ayers, Deputy City Manager/Internal Services Director

APPROVED: _____
Konradt Bartlam, Interim City Manager

ADDENDUM TO THE LODI CITY MID-MANAGEMENT ASSOCIATION MOU

Whereas, the City of Lodi and the Lodi City Mid-Management Association are parties to a Memorandum of Understanding (MOU) that will be extended through December 31, 2011; and

Whereas, the parties desire to enter into this Addendum to modify the MOU; and

NOW, THEREFORE, BE IT RESOLVED the parties agree as follows:

Section	Amended Language
Salary and Term - 1.1	Add language: "In the event that any Bargaining Unit negotiates a new across the board salary increase during the term of this MOU, negotiations would reopen with the Mid-Management Bargaining Unit regarding salaries. This clause shall not apply to a restoration of previously waived salary rights."
Salary and Term - 1.2	The terms and conditions of this MOU shall continue in effect until such time as they are superseded by a signed agreement/MOU between the City of Lodi and the LCMMA.

This Addendum shall not become effective until approved by the Lodi City Council.

CITY OF LODI,

Mid-Managers Association

Konradt Bartlam, Interim City Manager

BY _____
Curt Juran, President

Dean Gualco, Human Resources Manager

ATTEST:

RANDI JOHL, J.D., City Clerk

D. STEPHEN SCHWABAUER, City Attorney





CITY OF LODI COUNCIL COMMUNICATION

TM

AGENDA TITLE: Authorize Staff to Modify Memorandum of Understanding (MOU) According to Signed Addendum Between the City of Lodi and the Lodi Police Dispatchers Association

MEETING DATE: September 1, 2010

SUBMITTED BY: Human Resources Manager

RECOMMENDED ACTION: Authorize staff to modify Memorandum of Understanding (MOU) according to signed addendum between the City of Lodi and the Lodi Police Dispatchers Association.

BACKGROUND INFORMATION: The attached addendum modifies the existing Memorandum of Understanding (MOU) between the City and Lodi Police Dispatchers Association. Rather than renegotiate a new MOU, the City and the Lodi Police Dispatchers Association have reached a tentative agreement to extend the current MOU through April 30, 2012 and revise the method for determining seniority. The new seniority language is similar to that in the Police MOU.

FISCAL IMPACT: None.

FUNDING AVAILABLE: Not applicable.

Respectfully submitted,

Dean Gualco, Human Resources Manager

Jordan Ayers, Deputy City Manager/Internal Services Director

APPROVED: _____
Konradt Bartlam, Interim City Manager

ADDENDUM TO THE LODI POLICE DISPATCHERS ASSOCIATION MOU

July 2010

- A. The City of Lodi and the Lodi Police Dispatchers Association currently operate under a Memorandum of Understanding effective November 6, 2007 through April 30, 2011.
- B. This Addendum is entered for the purpose of addressing modifications to:

Article XXXIV (Seniority) 34.2: Seniority for purposes of shift selection, overtime, holiday selection and vacation leave shall be defined as total time in service as a member of the bargaining unit. Should a member of the Unit leave membership for any reason and return to membership within twelve months, seniority shall be as if the member never left.

Article XXXVI (Term) 36.1: The term of this MOU will be extended from April 30, 2011 to April 30, 2012.


 ~~For the above reasons the parties agree to add the following language:~~

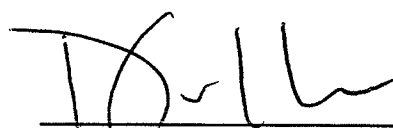
This Addendum shall not become effective until approved by the Lodi City Council.

CITY OF LODI,

Lodi Police Dispatchers Association


KONRADT BARTLAM, City Manager

By 
President


DEAN GUALCO, HR Manager

By _____
President

ATTEST:

RANDI JOHL, J.D., City Clerk

APPROVED AS TO FORM


D. STEPHEN SCHWABAUER
City Attorney